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CHRIST CHURCH, MONTREAL,

As Parish Church and Cathedral.

A REPORT

BY THE

SELECT VESTRY OF THE CHURCH

TO THE

Rector of the Parish,

WITH

APPENDICES,

CONTAINING

OPINIONS OF CANADIAN COUNSEL AND EVIDENCE OF THE CHIEF CATHEDRAL AUTHORITIES IN ENGLAND, RELATIVE TO ECCLESIASTICAL LAW AND USAGE IN ENGLAND AND CANADA.

Montreal:
LOVELL PRINTING AND PUBLISHING COMPANY.
1875.

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571

PREFACE.

The following report is submitted with the object of affording full and correct information on an issue which has arisen concerning the government of a Cathedral, superimposed by Royal Patent upon a Parish Church existing under a prior Royal Patent.

The question is a novel one, and in this instance is complicated by the creation of an Honorary Dean and Chapter consisting of the Rectors and Incumbents of various other Parish Churches, and by the separation of the offices of Rector and Dean. Claims have been made on behalf of His Lordship the Bishop, as well as of the Chapter, which are fully detailed in the following pages. The issues are not personal but purely official, and as such should be discussed. Sooner or later they must have arisen, and now that they have been brought prominently before the Diocese, in His Lordship's opening address at the last Synod, it is desirable to have them fully set forth in all their bearings.

A. B. Dawson

CONTENTS.

PAGE

Report of the Select Vestry 7
Opinion of the Honorable Mr. Justice Badgley 53
Opinion of William H. Kerr, Esq., Q.C., D.C.L. 67
Evidence of the Deans and Chapters of the Cathedral Churches of England 72
Evidence of the Bishops of England 81
Sir Robert Phillimore's remarks upon the maxim that the Cathedral is the Parish Church of the Diocese 85
Correspondence between His Lordship the Metropolitan and the Rector of the Parish 87

VESTRY CHRIST CHURCH CATHEDRAL,

MONTREAL, DEC., 1874.

To the REV MAURICE S. BALDWIN, M.A.,
Rector, Christ Church Cathedral,
Montreal.

REVEREND AND DEAR SIR,

Your Vestry, in reporting on the claims of His Lordship the Metropolitan in and over Christ Church in this parish, as stated in the Correspondence submitted to them, a copy whereof is hereunto appended, have to state: See Appendix E, p. 87.

That they have reviewed, firstly, the history of the Church; secondly, that they have taken means to ascertain the legality of these claims; and lastly, that they have inquired into the custom prevailing in England concerning the government of Cathedrals.

The statements made by them are verified by authorities, and are in all cases based on documentary evidence. The legality of these claims has been submitted to counsel, whose professional standing is second to none in this Dominion, and whose reputation is not merely local. See App. A & B, pp. 53 & 67. These opinions are given at length in the Appendix, and they will possess an additional interest as throwing much incidental light upon Ecclesiastical Law in the Province. See App. C, pp. 72 & 81. The last point is made plain by the Report of Her Majesty's Commissioners, made in 1854, from which, extracts bearing on the question are given in the Appendix.

Your personal knowledge, Reverend Sir, of the history and status of Christ Church is necessarily limited from

the fact that your residence in the Diocese has not been of very long date, and that your connection with the Church has been comparatively recent. For this cause we have felt it our duty to lay the whole case before you as fully as circumstances permit.

As might be anticipated, upon such a question honest differences of opinion do exist. These for the most part seem to arise from defective information concerning the past history of the Church. Many intricate questions must arise during the process of adapting the less essential portions of the system of the Church of England to the new circumstances of the Dominion of Canada, and it is precisely in the latent antagonism which exists between the Synod System and the Cathedral System of government where differences are likely to originate.

See pp. 42 & 83

Your Vestry believe that the claims made upon Christ Church are founded upon a misconception both of the law and the equity of the case, and feel that the defence of the rights of a Rector and Congregation, however distasteful to you personally and burdensome professionally, is a defence of right, which, when the facts are fully brought before them, will have the support of all candid minds.

With full assurance of our love and respect for yourself, believe us to remain,

Ever faithfully yours,

GEORGE SMITH,
Acting People's Warden.

ROBERT EVANS,
Rector's Warden.

For the Vestry of the Congregation of Christ Church.

REPORT.

CHRIST CHURCH CATHEDRAL.

THE history of the Congregation of Christ Church, the Parish Church of Montreal and the Cathedral of the diocese of the same name, dates from the close of the war which gave this country to the British Crown. In any question of the rights and privileges of Christ Church it is necessary to revert to this fact, because, if there be a precedence attaching to any congregation, it would naturally belong to that which is the representative, in our day, of the first Protestant congregation which ever assembled in the City of Montreal.

When peace was proclaimed in 1763 the army in Canada was disbanded; but the country was not attractive to English settlers because of the language and religion of its people. The colonies to the South were populous and flourishing and few cared to remain among a people with whom they could have no sympathies in common. The few who settled here, soon however, felt the need of the ministrations of religion, and, in answer to a petition from them, the Rev. David Chabrand Delisle was sent out from England, and commenced in 1766 the first register of the Protestant Church in this city. His congregation was weak in means as well as in numbers, and, being unable to build a church, they applied to the Recollet priests and obtained permission to hold their services

Garneau's Canada.

Bosworth's Hoch el Depicta.

in the Church, which stood upon the site of the present "Recollet block," at hours when it was not required for mass.

At the close of the war of independence many from the revolted colonies settled in Montreal, and the congregation so rapidly increased that in May, 1789, a Memorial, signed by the Minister, Churchwardens and Protestant inhabitants of Montreal, was sent to Lord Dorchester, asking for the use of the Jesuits' Church which stood upon the site of the present Court House. The Bishop of Nova Scotia being at that time in Quebec on an episcopal visitation, the Rev. Mr. Delisle carried a letter from the congregation to him, soliciting his influence with the Governor. The Bishop wrote in reply, August 10, 1789, and stated that the use of the church had been granted. He enjoined them, among other matters, to appoint churchwardens* and sidesmen to manage the temporalities. A vestry meeting was then held at the Recollet Church on September 20, when it was decided to raise £500 to fit up the new church, and that the subscribers were to receive value in return by the sale and allotment of pews. The pews were readily sold, and the church was completed and organised with Minister, Wardens and Vestry. On the suggestion of the Bishop of Nova Scotia it was called "Christ Church," and on December 20, 1789, the Rev. Mr. Delisle preached the dedicatory sermon.

Sandham's Montreal.

Vestry Books.

On the death of the Rev. Mr. Delisle the Rev. James Tunstall was presented to the vacancy by the King. In 1792 a petition was sent to the Governor, praying him to found a rectory under the Act 31st George 3rd. In

* The congregation already had churchwardens.

1801 the Rev. Dr. Mountain, brother of the first Bishop of Quebec, succeeded Mr. Tunstall, and in 1803 the church was destroyed by fire. Vestry Books.

The congregation then resolved upon building a church for themselves. Dr. Mountain, Hon. James McGill, Judge Ogden and Messrs. Frobisher, Sewell, Ross and Gray were appointed a building committee. They raised a fund by subscriptions and by the sale of pews; aid was also obtained from the British Parliament. The Governor granted the land upon which the church was to stand, and they added to the site afterwards by the purchase of a strip of land on Little St. James Street. The corner stone was laid in 1805, and, after many disappointments and delays, the church was opened for worship in 1814. During the time the church was building the Presbyterian Church in St Gabriel St. (erected in 1792) was lent at suitable hours for the English Church service. In 1815 the Rev. Dr. Mountain died, and his curate, the Rev. John Leeds, succeeded. In 1818 Letters Patent were issued, defining the limits of the Parish, creating a Rectory, and presenting the Rev. Mr. Leeds as Rector. Some informality having been discovered in these Letters, new ones were issued, revoking the appointment of Mr. Leeds and presenting the Rev. John Bethune. Before passing to the consideration of the Letters Patent it is well to note that the church had been built through the efforts of the congregation aided by a grant from the British Parliament, that the pews were a freehold of inheritance to the purchasers who received them as a property in exchange for their subscriptions to the building fund, and that the presentation to the Rectory was in the gift of the Crown. The Bishop of Quebec does not appear, excepting at the ceremony of laying the corner-stone; he aided, however, by his influence Hochelaga Depicta. Life of Bishop Mountain p. 25

in a subscription which was raised among the merchants of London.

THE RECTOR'S LETTERS PATENT.

In order thoroughly to understand this question of Letters Patent it is necessary to go back to the year 1774. In that year (the 14th George 3rd) a very celebrated Act was passed, well known as the "Quebec Act." One of its clauses enacted "that the King, his heirs and "successors, might, from time to time as they saw fit, "make provision for the maintenance of a Protestant "Clergy and the encouragement of the Protestant "religion." This object was kept in view when Upper Canada was separated from Lower Canada in 1791 by the Act 31 Geo. 3, cap. 31, commonly called the "Constitutional Act." The provisions of this Act which bear upon the matter in hand are, divested of technical language, as follows:

Quebec Act 14 Geo. 3, cap. 83

31 Geo. 3, cap 31.

Sec. 36. Land may be allotted for the support of a Protestant Clergy. (Clergy Reserves.)

Sec. 37. Rents, etc., may be applied to same purpose.

Sec. 38. The King is empowered to authorize the Governor, with the advice of the Legislative Council, to erect Parsonages or Rectories and to endow them.

Sec. 39. Presentation to Rectories to be in the Crown.

Sec. 40. "Provided that every such presentation "shall be subject and liable to all rights of induction and "other spiritual and ecclesiastical jurisdiction and author-"ity granted to the Bishop of Nova Scotia, or which may "hereafter be granted to the said Bishop, or to other "person or persons."

Sec. 41. These provisions may be varied or repealed by the Acts of the Legislative Council and Assembly and assented to by His Majesty.

Upon this Act the Rector's Letters Patent rest. It was a further definition of the Quebec Act, and the points to be specially observed are:

1. That Letters under this Act have the authority of the King, specially empowered to that end by Parliament and acting through the established government of this country.

2. That the presentation is in the Governor, and is subject to the jurisdiction of the Bishop of Nova Scotia and his successors.

3. That the Canadian Legislature may vary or repeal any of these provisions with the consent of the Crown.

The ground upon which this Patent was issued being thus established, the Patent itself remains to be considered. It bears date, Quebec, June 7, 1820, and is signed by Sir Peregrine Maitland. Omitting the customary verbiage of such documents, it provides as follows: Rector's patent.

1. The Constitutional Act is cited as the authority on which it issues.

2. The Governor is authorized by the King, and is acting under the advice of the Legislative Council.

3. The boundaries of the Parish of Montreal are to be the same as those of the Roman Catholic Parish erected by the Sieur de Vaudreuil in 1720.

4. One Parsonage or Rectory is erected in said Parish, to be called "the Parsonage or Rectory of the Parish of Montreal."

Rector's patent.

5. The Rev. John Bethune is declared Rector "in the same manner as the Incumbent of a Rectory in England."

6. Powers of the Rector: "And we do hereby will and "grant that the Rector of the said Parsonage or Rectory "and Parish Church of Montreal, and his successors, "Rectors of the said Parsonage or Rectory and Parish "Church, be, and shall continue, a body corporate, with "perpetual succession, by the name of the Rector of the Par- "sonage or Rectory and Parish Church of Montreal."..... "And he and his successors, by the name aforesaid, shall "be able and capable in the law, and have full power to "purchase, have, take, &c., rents, &c., lands, tenements, "&c., of what nature and kind soever, in fee and in per- "petuity or for term of life, &c."..... "Also to deter- "mine any of the said messuages, lands, &c., whereof or "wherein he or they shall have any estate or interest as "aforesaid." This clause gives the Rector power over all the real estate of the Rectory to buy or sell when authorized thereto by license from the Crown in whose power the patronage of the Rectory then was.

7. The Rector is declared subject to the authority and jurisdiction of the Bishop of Quebec and his successors, "in the same manner as any Rector of any Parson- "age or Rectory or Parish Church in England is under "the jurisdiction and authority of the Bishop of the "diocese."

8. "In *ratification* of the aforesaid" the Governor "by "these presents doth constitute and declare, etc., the said "church erected in Notre Dame street, in our said City of "Montreal, to be the Parochial or Parish Church of the "said Parish of Montreal and the Church of the said "Parsonage or Rectory of the said Parish, etc.

9. The Parsonage or Rectory is endowed with the said Church.

10. The Parsonage or Rectory is endowed with the freehold of the site upon which the church was built.

These are the main provisions of the Letters Patent, and up to the date of the Rectory Act they remained untouched. It was moreover maintained in the case of the Attorney General vs. Grassett (Rector of the Crown Parish of Toronto) "that the Rector or Parson under the Statute 31 Geo. III held in the same manner as the incumbent of a parsonage in England." 14 & 15 Vic., Chap. 175

Chief Justice Draper Report on Status of Church in Canada p. 28.

The year 1851 marks an important era in the history of the Church of England in Canada. In that year the Church Temporalities Act, the Church Society Act, and the Rectory Act, were passed; and, in the following year, they received the Royal assent. By the Rectory Act, sections 38, 39 and 40 of the Constitutional Act of 1791 were repealed, and the patronage (or right of presentation to the Crown Rectories) was vested in the Church Societies of the various dioceses, under such regulations as each Society might frame. In other respects, all existing Rectories were untouched. The Church Society of this Diocese passed a By-law upon the subject, on Oct. 5, 1852, and under this By-law the presentation of the present Rector took place. No further legislation occurred until, in 1871, the Quebec Legislature passed an Act "to vest in the Synod of the Diocese of Montreal power to sub-divide parishes constituted for ecclesiastical purposes under Royal Letters Patent." Under this Act the Bishop and Diocesan Synod are now taking steps to divide the Parish of Montreal.

14 & 15 Vic., Chap. 176
14 & 15 Vic., Chap. 171
14 & 15 Vic., Chap. 175

Church Society Report.

Quebec Statutes 1871 Chap. 19.

THE BISHOP'S LETTERS PATENT.

In considering the question of the Bishop's Patent it is necessary to go back almost as far as has been done in the narrative of the history of the Congregation of Christ

See page 7. Church. In the year 1787, while the organized Protestant Congregation were worshipping in the Recollet Church, the first Colonial Bishop was appointed—the Bishop of Nova Scotia, Dr. Charles Inglis. His See was at Halifax, and his Diocese consisted of all the remaining possessions of the Crown in America. In 1789 he made an episcopal visitation in Canada. In 1793 the See of Quebec was erected, and the Rev. Jacob Mountain was nominated first Bishop. In 1825, on the death of Bishop Mountain, the Rev. C. J. Stewart succeeded to the See. He, finding the care of a diocese, extending from Gaspé to Red River too onerous, solicited the Crown to divide it, but without success. The Crown, however, in 1835, created the Rev. George J. Mountain coadjutor Bishop without a See, under the title of Bishop of Montreal. It was provided that, upon the death of Bishop Stewart, he was to assume charge of the whole Diocese, and, in the meantime, he administered by commission. In 1837 Bishop Stewart died, and, under the title of Bishop of Montreal, Dr. Mountain administered the whole Diocese by virtue of his Letters Patent.

Life of Bishop Mountain p. 182.

Life of Bishop Strachan p. 165.

Metropolitan letters patent.

It should be particularly observed here that it does not appear necessary to inquire into the rights which these various patents conferred. Because, 1st, the Bishop's Letters Patent are not now essentially in dispute; and 2nd, because in 1850 the old order of things terminated. Bishop Stewart had died and Bishop Mountain had succeeded to his powers as titular Bishop of Montreal. Bishop Mountain resigned, and in 1850 new Letters were issued, creating him Bishop of Quebec, and in the same year the Diocese of Montreal was erected under new Letters Patent which appointed Dr. Fulford as Bishop, and placed his See at Christ Church in Montreal. These Letters Patent of the

See of Montreal have not yet been shown; but the *rights claimed in Christ Church* have been claimed under succeeding Letters *as Metropolitan*. The Rector in his reply states simply "that, not having seen the Patent, he was "unable to affirm more than that he was willing to recog- "nize the legal rights of the Bishop of Montreal in all "cases whatever." It was decided in the case of Long vs. Bishop of Capetown that "where a Colonial Bishop, "having been appointed by Letters Patent, surrenders his "Bishopric and is re-appointed by other Letters Patent, "any jurisdiction conferred by the former thereupon "ceases." It would seem then that all jurisdiction under the old Letters terminated in 1850 on the issue of the new Letters. As for the temporalities, the Church Temporalities Act of 1851 continued them under the newly organized system. One broad distinction exists between the Letters Patent of Bishops and those of Rectors, that the former issued directly from the Crown by virtue of whatever power may exist in the Crown alone,—the latter issued from the Crown authorized by Parliament, and acting through the constitutional Government of this country.

Correspondence p. 97.

Correspondence p. 94.

Freemantle & Broderick Ecclesiastical Judgments p. 295.

THE CATHEDRAL.

In the year 1850 Bishop Fulford arrived. The first notice in the Minutes of the Vestry of Christ Church of the added dignity of a Cathedral is on Oct. 7, 1850. On that day a special meeting was held "to provide funds "for the unavoidable expense incurred by the erection of "the Church into a Cathedral." It was proposed to raise the money by a tax upon the pews, but no action was taken, and the meeting adjourned until the 29th. At that meeting "the Lord Bishop attended, and stated "that, under the pecuniary difficulties of the Cathedral,

Vestry Minutes.

Vestry Minutes.

"he did not wish them to incur as large an expense as they "proposed." No tax was levied, but the Select Vestry were ordered "to provide a Bishop's seat and a pew for his family."

Vestry Minutes.

See p. 15.

As has been before stated, the Patent of 1850 of the Lord Bishop of Montreal has not been shown, but the Metropolitan Patent of 1860 confirms it, and indeed most probably recites it almost in full. But, be that as it may, the clause in the patent enclosed in the Bishop's letter of May 18th, 1874, under which the claims in question are made, reads as follows. "And whereas in and by "our Letters Patent, bearing date July 18th, 1850, &c., "&c. * * * and we did further ordain and constitute the "town of Montreal, in the said diocese, to be a Bishop's See "and the seat of the said Bishop, and did ordain that the "said town of Montreal should thenceforth be a city, "and we did thereby further ordain and declare that the "Parish Church called Christ Church in the said city of "Montreal should thenceforth be the Cathedral Church, "and the See of the said Bishop of Montreal and his suc- "cessors in the said See."

Correspondence p. 97.

Metropolitan patent.

THE CHAPTER.

In succeeding Minutes of Vestry the Bishop's name often occurs. He usually attended when in town, but the Rector always presided. The next entry bearing upon the questions at issue is dated Dec. 20th, 1853. The meeting was a special one, called by notice, and the Bishop was present. The Minute, being important, is given *in extenso*. It is as follows:

Vestry Minutes.

"A meeting to receive and determine upon the proposal "from the said Bishop to make provision for two Assis-

"tant Ministers for this Church, and to receive a report "of a Committee on By-laws."

"His Lordship represented to the Vestry the great "advantages which must result to the Cathedral, to our "public institutions and to the general interests of the "Church in this Parish, from the establishment of a more "extended clerical staff in the Cathedral; and, with this "view, requested a permanent grant of five hundred "pounds per annum to enable him to make provision "for two Assistant ministers therein. His Lordship also "announced his intention of creating the Rector and "Assistant Ministers, together with some of the senior "Country Clergy, a regular Cathedral Chapter, consist- "ing of a Dean and Canons, in accordance with the "authority given him in the Letters Patent constituting "the Diocese of Montreal."

"The report of the Committee appointed at a previous "meeting to revise the By-laws of the Vestry, em- "bracing the additional charge required for the perma- "nent salaries of the assistant ministers, and the *rente* "*constitué* on a lot purchased for the site of a parson- "age, was presented and unanimously adopted."

Then follow the By-laws, adopted under the provi- By-Laws of Christ Church
sions of 14 and 15 Vic. Cap. 176. They are in the main the same as they now exist; excepting that the 7th By-law, the only one which relates to the present question and which contained a list of salaries and estimate of expenses, has been altered at each Easter Vestry from year to year as the finances of the church required. It reads thus:

"7th. The following schedule is adopted as the existing charge upon the church funds:—

Rector's salary.....	£200	0	0
First Assistant Minister's salary...	300	0	0
* Second do do do.....	200	0	0
Vestry Clerk's do.....	100	0	0
Organist's do.....	50	0	0
Beadle's do.....	54	0	0
Insurance.....	58	0	0
Fuel.....	45	0	0
Clock keeper's salary.....	17	10	0
Organ Tuner's do	12	10	0
Bell Ringer and Bellows Blowers..	15	0	0
Vergers.....	7	0	0
Constitut on Parsonage lot.....	34	10	0
Contingencies, including Water Taxes, Washing, Printing, &c...	50	0	0

* "It is understood that not more than £100 of this item will be required before the expiration of one year from next Easter."

This minute has been quoted at length because it has been the subject of much misapprehension. Mr. Fennings Taylor, in his life of Bishop Fulford, seems to think that the two clergymen were engaged on the sole authority of the Bishop. He, however, goes on to say that they were "previously unknown to the Bishop," and "were chosen for and not by him." The Rector was chairman of the committee which brought in the report, and the actual engagement was by some person in England. As to the Chapter it is evident that it was created by the Bishop under his Patent; but as to the Assistant Ministers (Messrs. Lower and Gilson) the Bishop acted under the authorization of Rector and Vestry. The Vestry were simply asked to provide funds; they never had anything to do with the appointment of clergymen, for the late Rector was very

Last three Bishops under the Crown p. 69.

tenacious of his rights against everybody. The check of the Vestry on the Rector is their power of stopping all the salaries. No other minute upon this subject exists.

ASSISTANT MINISTERS.

Putting aside for the present the subject of the Chapter, it is convenient to consider here the question of the appointment of Assistant Ministers. Upon this head there is, without doubt, abundant evidence accessible; but the most satisfactory will no doubt be the evidence of the late Bishop and of the late Rector. The whole subject of appointments was thoroughly gone into during the unfortunate occurrences connected with Canon Loosemore's resignation. It will be remembered that his appointment by the Rector was never questioned; but, when a movement was made to dispense with his services, a clause was found in his engagement "that neither "party could dissolve it without sufficient reason in the "judgment of the Bishop." In the course of the discussion the Rector wrote to the present Bishop as follows: Printed report of Proceedings of Vestry.

"4th December, 1869.

"My Dear Lord,

"After mature consideration of your Lordship's pro- "posal—that if I would give you a promise that I would "not re-appoint either of the Canons after their resigna- "tion or dismissal, you will concur in the dismissal of "Mr. Loosemore—I have come to the conclusion that I "cannot consent to an arrangement which would involve "the surrender of my right of appointment, &c. * * * * * Correspondence, p. 89.

"Yours, &c.,

"(Signed,) John Bethune."

If the Bishop had a voice in the appointment of assistant ministers he would not have required to ask this promise from the Rector, because in that case the Bishop could have restrained the Rector by withholding his consent in the event of a reappointment.

The evidence of a letter written by the late Metropolitan is, if possible, still stronger. The letter has been published, and is therefore now public property.

" See House, Montreal, Jan. 26th, 1866.

" My Dear Dr. Balch,

" I herewith forward to you copies of two letters, " one from the Churchwardens of the Cathedral to the " Dean, and the other from the Dean to me; and, accord- " ing to the request of the Dean,* I now write to you, in " his name, to propose that you should come and join the " staff of Clergy connected with Christ Church Cathedral " in this city. The nomination rests absolutely and " solely with the Dean. * * * * * *

Printed answer by Vestry to Bishop of Ontario

" I will only further add that, upon your appointment " by the Dean as one of the officiating Clergy of the " Cathedral, it will afford me much satisfaction to mark " my own appreciation of your worth by nominating you " as one of the Canons. * * * *

" Yours very sincerely,

" Signed, F. Montreal."

This letter of proposal to the Rev. Dr. Balch is a sufficient commentary on the Minute of Vestry concerning the appointment of the Rev. Messrs. Lower and Gilson.

THE NEW CATHEDRAL.

In December, 1856, the old cathedral was burned down, and the congregation had again to make a strong and earnest effort. On the 23rd Dec. a general meeting of Vestry was held at Mechanics' Hall, and committees were appointed to report upon various points connected with the

Minutes of Vestry.

* The death of Mrs. Bethune that same morning caused this request.

emergency. Frequent meetings of Vestry followed, and through the whole series of events succeeding, the Finance and Building Committee took the most painful precaution to guard every step with the best legal advice. In the words of their Chairman, the Hon. George Moffatt, "the Committee had undertaken a responsible "duty, on the performance of which they deemed it ne- "cessary to be fully advised on all the points embraced "in the case." It was finally resolved to sell the old site and rebuild the church where it now stands.

Letter June 17, 1857, to Messrs. Bethune & Dunkin.

The Committee appointed to investigate the title (of which Committee the late Mr. Justice McCord was a member) reported that the title "existed in the Rector "as the free and unconditioned gift of the Crown." And they appended to their report the following opinion of Counsel, which is given in full as containing the best *resumé* of the matter.*

Vestry Minutes

"The property on which Christ Church Cathedral "was erected is vested by Letters Patent of the Crown "in the Rev. John Bethune as a corporation sole, under "the denomination of the Rector of the Parsonage or "Rectory and Parish Church of Montreal and his suc- "cessors, Rectors of such Parsonage or Rectory.

Mr. Bethune's opinion.

"And, by the 21st Section of the Church Temporalities "Act, power is given to such Rector to sell, alienate, or "transfer the property in question, by and with the con- "sent and participation of the Bishop, provided always, "that the price or consideration of such sale, alienation, "or transfer, be applied to the uses and purposes for "which the land so sold, alienated, or transferred was "conveyed.

"Montreal, Dec. 26th, 1856.

"(Signed,) STRACHAN BETHUNE."

* The title of the Rector in Christ Church and his power to sell were investigated not only by the lawyers who acted for the Church but by the lawyers who examined the deeds for the purchasers of the old site, in order to see that their clients' titles were valid.

Opinion of Messrs. Rose & Monk.

Acting upon the advice of Messrs. Rose and Monk, and of Messrs. Bethune and Dunkin, all the deeds of sale of the old site and of purchase of the new one, and the contracts with the artificers, were signed by the late Rector in "his capacity as Rector of the Parsonage or "Rectory and Parish Church of Montreal," the assent of the Bishop being signified by his signature (as assenting party) to the deeds of sale and purchase. Each deed of purchase contained a clause stating that the purchase "was made for a site for the Parish Church of the Parish of Montreal," and the title of the new church was as firmly vested in the Rector as that of the old one had been. His honorary title of Dean was studiously avoided in all the documents.

Copies of Deeds.

THE BUILDING FUND.

Vestry Minutes and Reports

It is unnecessary to dwell upon the particulars of the rebuilding of the church. The late Bishop took a lively interest in it, and attended all the meetings of Committee. He, more than any one else, is responsible for the adoption of the plan of the present beautiful edifice; and the deep chancel was decided on mainly through his strongly exerted personal influence. The funds for rebuilding were raised in the following manner:

Insurances upon the old church	$60,000
Proceeds of sale of site	36,000

The remaining cost was provided by the sale of pews, the issue of debentures, and by voluntary subscriptions. The total cost of the church was $175,000.

FUNDS RAISED IN ENGLAND.

The plans of the church were completed, and the building was in progress, when, on Aug. 22nd, 1857, the Bishop announced to the Building Committee that he intended

shortly to leave for England; and he "recommended "that a list of the subscribers to the building fund should "be sent to him, with a letter signed by the Building "Committee, requesting that he would exert his influ- "ence to procure subscriptions in England." The letter was at once drafted, and his Lordship was requested to collect "*for the rebuilding of the Parish Church and "Cathedral*". The total amount so collected in England was £2350 currency ($9400,) or about five per cent. of the total cost. This amount is entered under the head of "voluntary subscriptions," in the books of the Building Committee. Vestry Minutes. Vestry Minutes. Building Committee Books.

THE PEWOWNERS.

As in old Christ Church the pews were the property of private individuals, the rights of the pewowners soon came up for discussion. A value was assigned to each pew in the old church, and this value was credited towards the price of pews in the new one. Those who subscribed to the building fund were also considered, and they were allowed to deduct their subscriptions from the prices of their pews in the new edifice. In some instances when these pews were re-sold the proprietors more than recouped the amount of their contributions. Thus in the new church the pew owners have real rights in their pews, and all who subscribed had, or had the option of having, this value allowed them in return. See pp. 8 & 9 Vestry Minutes.

THE CHANGE OF SITE.

In England the removal of parish churches is of frequent occurrence. The Statute which usually regulates such removals is 59 Geo. III Cap. 134. Section 40 makes

Phillimore Eccl. Law. p. 1775.

a general provision for the pulling down of old parish churches and rebuilding them on any sites, as follows:

"Where any parish shall be desirous of extending and "increasing the accommodation in the parish church, "and it shall be found necessary and expedient to that "end to take down the existing church, and to rebuild "the same on the same site or on a more convenient "site, it shall and may be lawful for the churchwardens "of any such parish, with the consent of the vestry, or "persons possessing the powers of vestry, and with the "consent also of the ordinary, patron, incumbent and "lay impropriator, if any such there be, to take down "such existing church and to rebuild the same upon the "same or upon a new site."

Phillimore pp. 2154 2155

The Statutes 3 Geo. IV Cap. 72 and 8 and 9 Vic. Cap. 70 went further, and gave the power to the commissioners for building new churches, upon petition of the ordinary, the patron and the incumbent of a parish church, to transfer to any such new church the whole of the rights and privileges of the old parish church, while it yet stood, and the rector of the new church became without any new presentation the rector of the parish church in the same manner as he had before been. The parish church, in short, could be moved from one church to another, which then became the parish church.

These Statutes are quoted here to show that the emergency which occurred at Montreal has often occurred in England; because an impression might arise that a church required to be rebuilt upon its old site in order to retain its rights and privileges.

Any such impression is speedily dissipated on a close examination of the Letters Patent. The Patent, 1, defines the boundary of the parish; 2. erects therein one

Rectory; 3. presents the Rector; 4. creates a body corporate with perpetual succession under the title of "the Rector of the Parsonage or Rectory of Montreal," with power to buy and sell; 5. "*In further ratification and confirmation as aforesaid*" declares the church in Notre Dame street to be the Parish Church; 6. endows the Rectory with it; 7. endows the Rectory with the site.

To borrow the words of an elaborate opinion by Messrs. Rose and Monk it is clear "that the Corporation survives "in the person of the Rector." But it may be argued that the church in Notre Dame street was alone declared to be the Parish Church. The quality parish church then resides in the structure of the church, not in the site, for the Letters make a distinction. If the church had been rebuilt upon the same site (as happened in the case of the Toronto Parish Church), it would not have been the identical church mentioned in the Patent; consequently, a parish church never could be rebuilt when once destroyed. In this instance, strictly according to English usage, and to the provisions of the Church Temporalities Act, the money value of the destroyed church and the land with which the Rector was endowed was re-invested and placed upon another street, and no church stands now upon the old site. If the church had been rebuilt in Notre Dame street upon the next lot, would the object of the Patent have been better fulfilled? The Rectory was endowed with the site and not the site with the Rectory, for there could be no occult virtue in Notre Dame street rendering it specially suitable for parish churches. Moreover all the deeds recognized the new church as the Parish Church, and the Bishop accepted it as such. It was recognized as such in the Act 22 Vic. Cap. 4, entitled "An Act to enable the Rector of the Protestant Parish of

Opinion of Messrs. Rose & Monk June 24, 1857.

22 Vic., cap. 4

"Montreal, with the consent of the Bishop and Church-"wardens, to raise a loan on certain Church property for "the purpose of finishing the Parish Church." It was so recognized by the Synod, when it procured an Act to divide the Parish ; and it is so recognized by the Metropolitan Letters Patent. These last "ordain that the Parish "Church called Christ Church shall be the Cathedral." If Christ Church, which stood where it does now at the date of the Metropolitan Patent, be not the Parish Church it is not the Cathedral. And if the Diocesan Letters Patent of 1850 be taken, they read in the same way. They were issued while the old church stood ; and if the Parish Church was not moved, neither was the Cathedral moved. If the Rector of the Parish has no Parish Church the Bishop has no Cathedral. In that case there need be no question of the Bishop's rights in Christ Church any more than in St. George's or Trinity. The conflagration which destroyed the Rector's rights destroyed the Bishop's rights.

INSTALLATION OF THE BISHOP.

On the 5th of Sept., 1869, the present Bishop was enthroned in Christ Church, and took the oath administered on such occasions. In this he engages "that as "far as in me lies, I will well and truly direct and "govern this Christ Church, the Cathedral Church "of the Diocese of Montreal, according to the rules and "ordinances thereof ; and the property, rents, issues and "profits, rights, privileges, and liberties thereof, and "generally all things moveable and immoveable, there-"unto belonging, I will well and faithfully keep, defend "and preserve, according to the laws and ordinances of "the said Church, and cause by others to be kept,

Printed Installation, Service.

" defended and preserved, and the rules and ordinances " of the Church by our Sovereign Lady the Queen " enacted, in what relates to me, I will well and truly " observe, and cause to be diligently observed by others, " and I will not knowingly prevent or impede anything " which may be lawfully done for the advantage and " honor of the Cathedral Church."

It would appear then, that with what privileges the Bishop found the Church, he engaged, not only to let it remain, but also to maintain and defend it in the enjoyment of them.

CHANGES SUGGESTED.

At the Easter meeting of Vestry, on the 18th of April, 1870, the following letter from the Bishop to the Rector was read :

DRUMMOND STREET, April 16th.

MY DEAR MR. DEAN,

When we had some conversation about the Cathedral on Wednesday, you kindly invited me to speak openly to you on the subject, and I am sure you will not misunderstand me if I now put a few of my thoughts on paper. As there have been rumors of my intention to leave the Cathedral for some other Church, I am glad to take this opportunity of contradicting them unreservedly. Annual Vestry Report 1870.

The fact of Christ Church having been assigned to me by Royal Patent, as my Cathedral, and also the recollection that on my first arrival here, I was solemnly inducted by yourself and others into this Church, as the Bishop of the Diocese,—these would of themselves be sufficient reasons why I should not lightly take so unusual a step.

I have never, however, concealed from you that I much regret the present condition of the Cathedral, and I am not altogether satisfied with the manner in which the services are conducted.

Owing to the financial and other causes which have led to the lowering of the Clerical Staff, I much fear that the Cathedral has already suffered in popular esteem, and that it will suffer still further.

I feel also that the mode of conducting Public Worship is not altogether such as the Mother Church of the Diocese demands, and that it would be well that one of the three services should partake of a more specially Cathedral character.

I have, further, a strong conviction, which has never changed since I first entered the building, that, owing to the peculiar formation of the Church, the position of the choir is such as to militate against a hearty and united congregational worship. I see but one way of remedying this structural inconvenience, viz.: by bringing forward the choir and the organ, and ranging them under the tower; by removing the pulpit from the centre (where it now intercepts both the choir and the Communion Table from the view of the Congregation), and placing it on the side where the present lectern is; and further by running a screen across the chancel arch, to the height of about 12 feet.

In this case the Communion Table would be removed from the extreme end of the building, and placed before the screen. The chancel would consequently be unused, excepting for occasional week-day services, for which it would be admirably adapted.

I give this merely as my own opinion, having consulted no architect. If, however, such plan were adopted, it could not be expected that the expense of carrying it out should be borne by the Vestry.

I cannot, however, but think that voluntary contributions would be cheerfully given to effect so desirable an object.

I may add that a similar plan has almost always been found necessary in our beautiful English Cathedrals.

I have no wish to claim any authority in the Cathedral which I do not possess, either as regards the structure of the building or the mode of conducting its public services; but I feel that, in virtue of my office as overseer

of this Diocese, it is my privilege as well as my duty to make any suggestions which appear to me to be likely to conduce to the well-ordering of this or any other Church under my Episcopal charge, and I feel sure that you are willing to receive kindly any suggestions which I may desire to offer. I long to see this Cathedral stand high in the affections of our people, and take that place of dignity which it ought to fill among the Churches of this City and Diocese.

It will thus meet with the favor and support which we shall all gladly see it enjoying.

Believe me, dear Mr. Dean,

Very faithfully and sincerely yours,

(Signed,) A. MONTREAL.

As this letter proposed a very important and costly change in the structure of the church, it fell properly upon the Vestry, who would have to provide the funds, to consider it. It was discussed at the Easter meeting, and ordered to be printed and appended to the Church-wardens' report. The matter was, however, still kept before the Vestry, and came up at a meeting of the Select Vestry, on May 16th, and again on May 23rd. A Committee was then appointed to wait upon the Bishop and upon the Rector, and, having ascertained their views definitely, to make a report at next meeting. On the 30th of May the Committee reported. The suggestions of the Bishop were then considered clause by clause, and it was unanimously resolved "that in the pre-"sent state of the funds of the Church, it is impossible to "sanction any project for structural changes in the "church entailing expense."

Vestry Minutes.

Other considerations also led to this conclusion. The chancel is the most beautiful part of the church, and it would be extremely distasteful to the congregation to

hide it behind a screen; moreover the changes suggested would interfere with the rights of a number of pew owners, and the income of the church would be narrowed by the obliteration of pews. There would also be this inconvenience in making so costly a change, that a succeeding Bishop might take the same view of the matter which the preceding Bishop did, and order the screen to be removed and the chancel restored to the church.

See p. 22

CHANGES IN THE SERVICES.

Vestry Minutes.

In the Minutes of succeeding meetings, questions of changes in the services occasionally came up. At a meeting on Oct. 17th, 1871, a pastoral letter of the Bishop to the whole Diocese concerning changes in the services was read. The Vestry could not interfere in this matter, but a resolution was passed unanimously "that the "Very Rev. the Dean be respectfully requested to cause "Evening Prayer, with the exception of the Psalms and "Canticles, to be said and not sung or intoned in any "manner."

An adjourned meeting of the Select Vestry took place on Nov. 13th, 1871, from the Minutes of which meeting the following is extracted:

"Letter received from the Rev. John Bethune, Dean "and Rector of Christ Church Cathedral, in reference to "the motion carried at last meeting; and advising that "no changes should be made in the services. It was "then resolved, that, as the Dean has expressed his wish "that no change should be made in the services, the "Select Vestry do not take further steps for the pre-"sent."

THE NEW RECTOR.

On the 22nd Aug., 1872, the late Rector died. Two or three days after his death the Bishop nominated the Incumbent of St. George's as Dean, and afterward, in due course, the vestry met and presented two names to the Bishop, who nominated the present Rector. The installation of the Dean and the induction of the Rector took place on the same day, the 13th of October, 1872. In the order of services the installation of Dean came first. Concerning the induction of the Rector a difference had however, arisen between the Bishop and the Churchwardens with regard to the ceremony. The manuscript form as prepared by the Bishop read thus: "We by "divine permission Bishop of this Diocese of Montreal, "do,by these presents, give and grant unto you the "Rev. Maurice S. Baldwin, in whose learning and "sound doctrine we do fully confide, *our authority to dis-* Bishop's MSS draft and printer's proofs.
"*charge the office of a Priest in the Cathedral of Christ* "*Church.*" Now, inasmuch as Mr. Baldwin had, for two years previously, been exercising the office of Priest in the Cathedral, this form granted him nothing, and would have left the Rectory still vacant. Dr. Bethune would have had no successor as Rector, and the Vestry would have been called together to present two names for the Bishop's choice to no practical effect. Inasmuch as the title of the church is in the Rector, it would be difficult to say to whom the ownership of the church would then have passed. The Churchwardens as guardians of the rights of the congregation resisted this change, and, after some difficulties not necessary to detail, the Bishop consented to an alteration of the ceremony so that the Churchwardens delivered the keys to Mr. Baldwin as Rector of the Parish of Montreal. The offices of Dean and Rector having been sepa-

rated, there was found at the ceremony no special seat in the chancel for the Dean as Dean, and the new Dean was for that occasion, as a temporary arrangement, installed in the Rector's seat, over which the family escutcheon of the late Rector still hangs. The sermon was preached by the Bishop; the following extracts from the newspaper report at the time will show that the Bishop still retained the views enunciated in his letter of April 16, 1870, while he testified to the rubrical manner in which the services were conducted:—

Report of sermon in Star newspaper

"There are also many details of spiritual arrangement, "and one sanctioned by time, endeared to us by old and "sacred association, and tested by long experience, which "our Church wisely adopts. For example, in this "diocese the Bishop has his place, the Dean his appointed stall, with the Archdeacons and Canons, each in their "respective gradations. These form what is called the "Cathedral Chapter, who are sometimes called together "to advise their Bishop. But Christ Church is not only "a Cathedral, it is also a Parish Church, and as such "it has its Rector and his assistants, who are entirely "responsible for the services within it."

* * * * "With regard to the services of this "Cathedral I am thankful to know they are done decently "and in order. The building is cared for, never more so "than at the present time; the services are well attended "and often crowded. His Lordship in closing remarked: "that there were, however, one or two improvements "which he would like to see effected in order to make "the Cathedral worthy of the high and dignified position "which it holds in this important diocese, and in this "connection he mentioned the placing of the choir in the "main body of the worshippers, converting the unoccupied space into a little chapel for daily worship."

THE NEW RECTOR'S CHANGES.

Since the meeting of Select Vestry on Nov. 13th, 1871, the question of changes in the services came up but once; and that was at Easter, 1873, when a motion was made, respectfully to request the Rector to cause the "choral responses" and the "amens" at the end of prayers to be said and not sung in future. The matter was referred to the Rector who made no change. He did, however, make a change to conform to the Bishop's pastoral by discontinuing the Litany at the morning service, and with this pastoral the services of the Cathedral are now in entire accord; a proposition which cannot be affirmed of some other churches in the city.

THE NEW STALLS.

In the year 1872 the Vestry erected under the tower, upon the decanal side of the church, which happened to be the only side unoccupied, three stalls for the officiating clergy. In relation to this a special meeting of Select Vestry was called on Dec. 30, 1872. The Minutes commence with the following letter from the Bishop:—

"Dec. 26, 1872.

"My Dear Baldwin,

"When the Churchwardens so kindly called upon "me on Monday evening, I felt quite satisfied with their "assurance that they had not intentionally thwarted my "wishes, as regards my original proposal for moving my "seat in the Cathedral, but were under the impression "that I had abandoned the idea.

"At their request as well as yours I have looked at "the new stalls, with a view of suggesting a plan for "avoiding the present difficulty. You kindly proposed "that I should occupy the seat which was designed for "you, and that you were willing to take the next seat.

"This I could not consent to do, though I am very sure "that you really wished it. But I think that, if the "stalls are to remain where they are, it would be very "desirable that there should be a corresponding one on "the opposite side, the first of which would naturally "be occupied by yourself. Thus there would be six "seats, four of which would be available for any clergy "who might be taking part in the service.

"The present stalls strike me as being unnecessarily "high, and should be on the floor of the church. They "could easily be lowered by the removal of the base, "and this would give them a lighter appearance. I "also think that there should be a door on the pillar "side. There would be difficulty about Mr. * * * * "pew, and therefore nothing could be put up till a "pew becomes vacant in the body of the church. "With regard to my seat: a little device would suf- "ficiently mark it as the Episcopal stall. I hope that "the Churchwardens will allow me to bear a part of the "expense which this or any other arrangement may en- "tail.

"I have thought again of my proposal to get the "Chancellor and two or three others to confer together, "and draw up a kind of code defining the two-fold posi- "tion of the Cathedral, as a Parish Church and a Cathe- "dral, and I am persuaded that it would be desirable in "order to avoid future difficulties.

"Believe me,

"Yours, very faithfully,

"(Signed,) A. MONTREAL."

The Vestry then "Resolved—that having heard the "statements of the Rector and Churchwardens with re- "ference to the letter of the Lord Bishop to the Rector, "this Vestry is of opinion, that the Rector and Church- "wardens should meet the Lord Bishop in the Cathedral, "and select a place in which to put a throne or seat to "be occupied by His Lordship the Metropolitan."

"With regard to the proposal of His Lordship: that "the Chancellor and two or three others should confer "together, and draw up a kind of code defining the two-"fold position of the Cathedral as a Parish Church and "as a Cathedral.

"Resolved—that inasmuch as this is the Parish "Church of the Parish of Montreal as defined by law, "this Vestry is of opinion that it has no power to con-"sent to such commission."

THE RECENT CORRESPONDENCE.

The recent correspondence between the Bishop and the Rector, for convenience of reference, is appended to this report. The "suggestions" of 1870 are there, "demands" and "rights," and the "claims" of the Bishop would reduce the Rector to the position of Curate, which a change of seat to the opposite or "Cantoris" side of the Church would conspicuously mark.*

See p. 28.

See pp. 92, 90 and 91.

And here it is well to observe that this is not a personal question between individuals; it is a question between the offices of Bishop and Rector. Some

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* This question of seats, so trivial at first sight, excites inquiry when the Rector is asked to move. In an Anglican Church the first seat on the right hand, passing up from the nave, is occupied by the clergyman who possesses the church, whether he be called Rector or Dean; the next in rank sits opposite. In a Parish Church in England the Rector, even when a lay impropriator, has the chief pew in the chancel. In Lichfield Cathedral the first seat on the right is occupied by the Dean, the first on the left by the Precentor, the last on the right by the Chancellor (not the Diocesan officer of that name), the last on the left by the Treasurer, and the Canons take their seats right and left alternately inwards according to their precedence. The new stalls being upon the right hand, the Rector at present occupies the seat proper to the owner of the fabric.

Phillimore p. 1807.

Statutes of Lichfield Cathedral.

of the points have been already touched upon in the narrative on the preceding pages, but, even at the risk of tediousness, it will be necessary to touch upon them again, for they may be looked at in a threefold aspect;—as involving the rights of a bishop in a cathedral—as involving the rights of the rector in his parish church—and as involving the general powers of a bishop in his see. It will be found on close examination that it is impossible to touch the rights of the Rector of this parish without laying down principles applicable to all parishes; and, if it be established that the rights claimed by the Bishop are his inherent rights as Bishop of the Diocese, the clergy, in after years when the persons now concerned have passed away, will find that powers conceded to the Episcopal office can never be recalled, but grow by continual accretion; for each successive Bishop, being sole in his order, and having an absolute veto upon all legislation, power necessarily tends to accumulate in his hands.

Correspondence pp. 89 and 91.

Returning, however, from such general considerations to the particular rights claimed in this instance, a few remarks may be added as to the power of appointing the *assistant clergymen*. No single instance has as yet been adduced of any cathedral in England or in Canada, where the assistant clergy are appointed by the Bishop. The Metropolitan Patent specifies no such power; as to the custom in Christ Church, the preceding pages afford abundant evidence, if therefore the right of appointment or nomination exist in the Bishop it must be by virtue of his office, and be of general application to all churches.

See pp. 19 and 20.

Vol. 2 Stephen Commentaries p. 695 ed. 1874

A *curate* is described by Stephen (Commentaries on the laws of England) as "a clerk in holy orders employed (as a general rule) by a rector, vicar, or other incum-

"bent of a living, either to serve in his absence or as his "assistant as the case may be." And again, Phillimore (Ecclesiastical Law) says curates "are the spiritual "assistants of a rector or vicar, by whom they are "employed and paid. They may officiate in a parish "church, or chapel of ease in the parish of the rector or "vicar." In the case of chapels of ease dependent upon the parish church, Stephen says "the nomination to "them is in the incumbent of the parish church, and "cannot be taken from him except by agreement between "himself, the patron and the ordinary." So Phillimore (Ecclesiastical Law): "Whenever a chapel of ease is "erected, the incumbent of the mother church is entitled "to nominate the minister unless there is a special agree-"ment to the contrary." If this be so in the case of curates in chapels outside the walls of the parish church, it must be so "*a fortiori*" within the walls of the parish church itself; but the bishop always has the power to refuse his license for just cause, and without his license no curate can officiate anywhere in his diocese. In that sense the assistant clergy of every church are "subject to the approval of the bishop."

Phillimore p. 299.

Stephen Vol. 2 p. 746.

Phillimore p. 306.

Regarding the services of the church, the Bishop complains that he has on several occasions "made sugges-"tions for the improvement of the Cathedral worship "which have been disregarded, and no steps taken to bring "them before the proper authorities." Upon this point his Lordship is evidently under misapprehension, as the extracts from the Minutes given in the preceding pages will abundantly show. While his proposals for choral service and surpliced choir were being debated, many of the Vestry were urging the Rector to put a stop to such choral responses as were actually in use. As regards the

Correspondence p. 89.

See pp. 30 and 33.

general powers of a bishop over the services of the church, they are undoubtedly large, and are limited only by the limitations of the Prayer Book itself. The principle is laid down by Sir Robert Phillimore in Martin vs. Mackonochie, "that in all cases of doubt reference must be "had to the ordinary, to whose authority there was on' "one limitation;" that nothing should be done contrary to "anything contained in this book"—the Prayer Book. It has been shown by the Bishop's installation sermon on a preceding page that the services are done "decently and in order," and that "the Rector is responsible for them." If, however, anything be done in the Cathedral inconsistent with the Prayer Book, the Bishop has power of visitation summarily to correct either the excess or the defect; and he has the same power in every church in his Diocese.

Martin vs Mackonochie p. 70.

Sermon of the Bishop see p. 32.

In the correspondence the Bishop claims the right "occasionally to introduce a stranger." The difficulty in conceding this point, as a matter of right, is not so much in the present as in the future. Men pass away, but institutions endure; and, in after years, a bishop might occupy the episcopal throne who might care very little for the privileges common to Christ Church with all other parish churches in the Diocese. It might well happen that the Rector would be compelled to concede one of the services, or that a series of strangers, to the church, if not to the Diocese, might systematically, endeavor to inculcate views which (though allowable in the liberty of the Anglican church) might be repugnant to the Rector and congregation.*

Correspondence pp. 89 and 91.

* The trouble in British Columbia arose in a manner similar to this. The Archdeacon preached a sermon in the Cathedral which (though it seems to have met with the approval of the Bishop who was present) was so intolerable to the Dean that before giving out the

The Rector's reply reserves the right of objection, but that is stated in the most hypothetical manner. He states that he will always desire to meet the Bishop's wishes, and this must be so, for a bishop has many ways of making his displeasure felt, and no one would lightly incur it. As for the right of a rector to object, there can be no serious question that it exists. Sir Robt. Phillimore says: "There is no general principle "of ecclesiastical law more firmly established than this: "that it is not competent to any clergyman to officiate "in any church or chapel within the limits of a parish "without the consent of the incumbent." This he calls "a cardinal point of ecclesiastical law." So again, in the case of Farnworth vs. Bishop of Chester, the judge said. "It appears to me that no person can have the right "to compel the vicar of the parish to allow another, "though licensed by the Bishop, to officiate in a public "chapel erected for the ease of the inhabitants of a por-"tion of the parish; and that no such person can officiate "without the consent of the vicar." If this be so in a chapel it must be so in the church itself where the vicar officiates in person. The principle is laid down by Chief Justice Mansfield in Rex vs. Bishop of London: "No per-"son can use the pulpit of another unless he consents." It is a universally admitted proposition in the Church of England that no one can preach anywhere without the license of the Bishop, but it is a very different thing to

See p. 94.

Phillimore p. 1833.

Phillimore p. 1181.

Phillimore p. 585.

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closing hymn he made a few remarks of protest which led to an admonition from the Bishop. The quarrel went on until the Dean (who is the eldest clergyman of that Diocese, being an old Hudson's Bay Missionary) left the Church of England with 350 of the leading laity including the foremost men of the colony. The late Governor, Sir James Douglas, has offered a site for the new church and $1000 to the building fund.

Address of Dean Cridge to the Congregation.

assert that a clergyman may preach in any place with the permission of the Bishop. In the case even of lectureships Phillimore says "it seems generally that the Bishop's power is only to judge as to the qualification and "fitness of the person and not as to the right of the "lectureship." The right to object to the introduction of strangers and the right to nominate the assistant clergy in reality fall under the same general principle of ecclesiastical law, and must be considered together.

Phillimore p. 585.

In dealing with this matter it must not be forgotten that the congregation are most important factors in the problem. It is so easy in a church like the Cathedral to introduce discord. If a clergyman were supported by the Bishop, and knew that he was not dependent on the Rector, how could peace be preserved? Nothing could prevent the congregation from being divided into parties. The majority can always put out the man they do not like by stopping his stipend; but the process is tedious and causes great agitation.

The theory of the Church of England is by many held to be, that, as all authority to preach issues from the bishop, all clergymen preach merely as the bishop's vicars; from this they conclude, that the bishop has a right at any time to preach to the exclusion of the rector. This conclusion does not follow from the premises, even if the premises were undisputed. The bishop has the power of ordination, and may, without cause assigned, shut the door of entrance to the Church. He may likewise refuse, without cause assigned, to promote to priest's orders, and he may (with or without cause assigned does not clearly appear) refuse to admit a clergyman from another diocese. He may also, for cause assigned, refuse to induct into a benefice; but where he has once induct-

For English usage on the right of Bishops to preach in Cathedrals See pp. 72 to 84.

ed and committed to another the right to preach and minister in a special place, it does not follow that he retains the right himself. If, for any cause, the services of the church be intermitted, as in the case of the suspension of a clergyman or the sequestration of a living, the bishop may nominate a curate ; for upon the bishop is the responsibility that the services of the Church are performed according to the law of the Church; but when once he fills a benefice, the church is full—it is full against every one, even against the Queen. The bishop's powers are general, and as visitor he can compel every one in his diocese to conform to the Law of the Church ; but if the Law be unbroken it does not follow that he can interfere. Phillimore p. 479.

Much, however, may be said on the theory of this point ; but it is at least undeniable that the Rector has a right to preach. His right is the usual and constant right. It has been shown that he is responsible for the services, and he must therefore provide beforehand for the services of each coming Sunday. The right of the Bishop, from the nature of his office, must be intermittent in its exercise, and it cannot be thought unreasonable that therefore he should give notice to the Rector of his intention to preach. The Rector's proposition obviates all difficulty, for he proposes to send to the Bishop at the beginning of each month a blank form, upon which the Bishop may designate the days when he wishes to preach, and the Rector will then provide for the remainder. Practically the whole matter is conceded to the Bishop ; there remains only a question of abstract ecclesiastical law which it is not necessary to dwell upon. The only point remaining is that of notice ; for, if the Rector has given public notice and made preparation for any special occasion, it would be unreasonable that the Bishop should See p. 32. See p. 94.

intervene as a matter of right without notice and take the pulpit from him.

Much of the difficulty of the present discussion arises from the supposition that a Chapter,* consisting of Dean and Canons, have rights inside the walls of Christ Church. And indeed, if it be granted that they have inherent rights to seats in the chancel, it would be difficult to refuse them, in a year or two, the right to preach; and the functions of the Rector would gradually be absorbed by a body of men nominated by the Bishop, while the functions of the Congregation would be limited to paying the bills for keeping up a most costly church and an expensive service. When the late Rector was created Dean, no new right in his church accrued to him thereby. He obtained only Diocesan precedence. The Rector of Christ Church, as the corporation possessing the fabric, corresponds to the corporation which possesses the fabric of an English cathedral in all matters of real rights. He does not now possess the honorary title and precedence of Dean. As for the Chapter if it be a council to advise the Bishop, whenever it exercises its functions it must come into collision with the Synod. The Synod has distinctly refused to recognize it as an advisory body.† In

Correspondence pp. 90 & 91

Sermon p. 32.

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* It should be noted that the quality "Cathedral" does not reside in a church because of the dean and canons, but because of the bishop's "Cathedra," or chair which is placed there. There are deans and canons at Windsor and Westminster, but no bishop, and cathedrals can exist as Quebec now, and St. David's and Llandaff before 1840 where there were no Deans.

Royal Commission Report p. xxviii.

† At the Synod of 1874 a motion was made to appoint a standing Committee of advice for the Bishop. It found very little favour and was negatived by a very large majority. An amendment was proposed to make the Cathedral Chapter with four laymen, a Committee of advice. This proposition received only two votes.—*Gazette Report.*

the parallel case of Archdeacons (who in England may even hold visitations and exercise usually large powers) the Synod, after years of discussion as to what power they should have, finally gave them the power to collect statistics, and to report to the Bishop when churches were out of repair. The right of the Bishop to create honorary titles of precedence is not called in question. It is when real rights are claimed that the Chapter is asked to produce its title-deeds. All that appears upon the books of Christ Church concerning it has been given in the preceding pages. The Bishop appeared at a vestry meeting and announced his intention of creating a "Chapter by virtue of the authority given him in his "Patent." What authority could any patent give him to bestow the Rector's rights upon the newly constituted body? He asked the Vestry for no stalls; and, if any were given by the Rector, it would surely be easy to produce the document. In England when Honorary Canonries were founded under an Act of Parliament it was provided that the Honorary Canons should have no seat in the Chapter, and that their appointment should be under regulations made with the consent of the Chapter —the Corporation possessing the fabric. So long as the Deanery and the Rectory were represented by one person, no difficulty arose; but as soon as the offices were separated and the present anomalous position created there was of necessity a collision. The Dean has been installed and the question may arise: Has he a right to preach? and if so how often? The power of assigning seats does not seem to flow from the Bishop's Patent. The Patent states simply that the Bishop's own seat shall be in the "Parish Church called Christ Church." The soil and freehold of the Church are by the Rector's Patent

Canons of the Diocese.

See p. 17.

See page 31.

vested in the Rector; but the power over seats is by
14 & 15 Vic., cap. 176. Act of Parliament vested in the Rector and Churchwardens; and no other person than the Bishop (whose
6 Vic. cap. 32. powers of visitation enable him to go everywhere in his diocese) can sit in the chancel excepting by permission or capitulation of the Rector and Churchwardens. But, supposing the Rector were ousted and the Dean and Canons installed in his place, the Bishop would have no more authority than now; and the congregation would have changed a minister in whose nomination they have a voice for a number of ministers nominated by the Bishop. The Rector, in his reply, has engaged to provide stalls for the Canons whenever they may be expected to be present; but to
Correspon- assign defined seats* to be kept vacant always, for them, would be to acknowledge claims from which a long train of consequential rights might flow.

In this discussion the rights of the congregation cannot be ignored. To them the church is their Parish Church. They worship in it; they pay the Clergymen and support the services; they pay the expense (not a slight one) of maintaining it; they have carried it through great difficulties, and their wishes should have great weight in the matter. As a Cathedral it is seldom used. Only at the meetings of Synod can the Canons be present, and on those occasions when the Diocese requires the Church in its Cathedral capacity, by tacit consent, the Bishop gives the orders for the services as it may please him.

Correspondence p 98. * The custom as given in the evidence of the Dean and Chapter of Durham before the Royal Commissioners is that "stalls are provided "for the honorary canons whenever they may be present." This has always been the custom in Christ Church also. No change has been made by the present Rector, the choir always sat as they do now.

An impression is common in America that, although the powers claimed could not be exercised by a Bishop in a Parish Church, the powers of a Bishop (as it is generally put) in "his" cathedral are much greater. It is indisputable that the exact opposite is really the case in England. There the Deans and Canons possess the Cathedrals in a much more exclusive manner than Rectors and Vicars do their parish churches. The fact of Christ Church being a Cathedral strengthens its position very much in the present controversy. The question now is not as to what powers St. Dunstan or St. Thomas à Becket might have possessed; but as to what powers Archbishop Tait now possesses in the Cathedral of Canterbury. These latter are the only powers the Crown purported to convey by the Letters Patent.

See p. 72.

The present powers of a Bishop in a Cathedral are stated concisely by Sir Robert Phillimore in the following sentence: "By degrees the dependence of the Dean and "Chapter on the Bishop, and their relation to him, grew "less and less; till at last the Bishop has little more left "than the power of visiting them, and that very much "limited; and he is now scarcely allowed to nominate "half of those to their prebends who all were originally "of his family."

Phillimore p. 172.

See p. 82.

While these questions were under discussion in Montreal, the case of Exeter Cathedral was decided by Sir Robert Phillimore in the Arches Court of Canterbury. (In this instance, the Bishop is a Canon of the Cathedral and therefore has a voice in the Chapter.) The case first came up in his own court, when, acting under the advice of his assessor, the Bishop gave judgment against the Dean and Canons to remove a certain reredos, because it had been erected without a faculty from him.

Exeter Case.

Guardian Aug. 19 1874.

"The proposition of Ecclesiastical Law involved in this "part of the sentence," says Sir Robert Phillimore, "has "very greatly surprised me. After an experience of no "ordinary length with the subject of faculties, which, as "Chancellor of various dioceses before I occupied my "present position I have often been compelled to con- "sider in all its bearings, I could not recollect a single "instance in which a Dean and Chapter had asked for, or "obtained, a faculty for alterations in "*their*" cathedral. "It has been admitted that after a careful search no re- "cord can be found of such a faculty ever having been "issued for the Cathedral of Exeter." "It would not "have surprised me to learn that in some Cathedrals "which included within their walls, as Chichester and "Carlisle Cathedrals did formerly, and as I believe Ban- "gor Cathedral does still, a parochial church, a faculty "had been obtained from the Consistorial Court for alter- "ations in such a parochial church, and, upon enquiry, "I find that in 1813 a faculty, so specially limited, was "granted in the Diocese of Carlisle. This particular and "solitary exception seems to strengthen the rule to the "contrary."

The learned judge then goes on to explain what a fac- ulty is: "It is, properly speaking, a license, issued by the "Ordinary through his Consistorial Court, to effect cer- "tain alterations of a grave nature in a parish church. "The issue of this instrument is preceded by a citation "affixed to the church door calling upon all parishioners "to show cause, if they desire to do so, against the grant "of the faculty on a certain day in the court; if they do "appear, a suit begins and is prosecuted in the usual "manner."

The subject of faculties is, in England, an important one. There the theory is, that every parishioner has

a right to a seat in the Parish church without payment. "As for personal property in a pew, the law knows no "such thing; every householder has a right to a seat." Phillimore p. 1799. The Bishop's court is part of the machinery of the state church to protect the rights of the parishioners against alterations by the Rector which would interfere with them. Therefore in England the churchwardens are more the deputies of the Bishop when they appoint seats to particular persons in the parish church; because the funds are provided by the church rates.* In Canada, all this is inapplicable, for there are local statutes regulating such matters. There are no Bishop's courts; and the parishioners find the money for alterations, and own the pews by law. They can protect their own rights by ordinary suits in the civil courts. In the congregation which Christ Church represents there were churchwardens before an Anglican Bishop had ever landed on the shores of America. Stephen Vol. 2 p. 714. Phillimore p. 1799. Temporalities Acts. See page 8.

In the case of Exeter Cathedral there were certain privileges claimed by the Chapter, of exemption from visitation by the Bishop, which were not sustained; and the whole case, as regards the powers of the Bishop, turned upon his rights as Bishop of the See. Sir Robert Phillimore in his judgment limits those rights as follows: "The Bishop indeed has his throne in the Cathedral, Guardian report.

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* In England, by prescription, the cost of repairs in the chancel generally falls upon the Rector and is not levied as a rate upon the parish. The churchwardens receive their commission and authority from the Bishop before being admitted to office and neither they nor the parishioners have any rights in the chancel as to seats. In Canada this portion of the English law is inapplicable. The churchwardens do not represent the Bishop, the parishioners pay for the whole structure, and the Canadian Legislature has placed the whole fabric without exception in the control of the Incumbent and churchwardens.

"and has a right to preach in it; but it is manifest that "the relations of the Dean and Chapter to the Ordinary "are very different from those of the clergy generally. "The Dean and Chapter have privileges which paro- "chial incumbents have not, both with respect to the "services in *their* Cathedrals, the fabric itself, and "various other matters; and as has been shown their "consent is required in order to confer validity on cer- "tain acts of the Bishop."

See 83

THE SYNOD.

Having considered the rights claimed by the Bishop in their different aspects—as rights under the Queen's patent —as rights in a Cathedral—as rights in a Parish Church —as general rights in his See—and as rights according to the rules and customs of Christ Church; it might be well, before coming to a conclusion, to consider the powers of the Synod in the matter; the more especially, because an idea is prevalent that, without any reference to the law of the case, the Synod can regulate it as it pleases.

And here a preliminary consideration arises. If the Synod pass a canon on this subject, it *ipso facto* concedes that the Bishop does not now lawfully possess the powers claimed. And if he does not possess these powers, and the Synod endeavours to bestow them on him, it might be confidently expected that, in accordance with the terms of the oath to "defend and maintain the privileges of Christ Church," the Bishop would at once negative such a canon by the absolute veto which he possesses.

See Installation Oath p 26.

The Rector has asserted in his reply that, whatever the legal rights of the Bishop may be, to these he will wil-

lingly submit; and (while guarding himself from conceding the right of the Committee of Synod to interfere) he has voluntarily exposed to a gentleman, a member of that committee, all the books and papers of the church which were under his control If the claims made be found to be legal, it will be impossible to charge contumacy against him, but, if it be found that the Bishop does not possess such powers in Christ Church, and a canon be enacted to confer them, it will be impossible to give such canon operative force without another Act of Parliament. For if it was found necessary to obtain an Act of Legislature to divide the Rector's Parish; it must be necessary to obtain another to enable the Dean and Canons to invade his church. The rights of the Rector of the Parish of Montreal have been shown to rest upon the firm basis of Imperial and Colonial legislation, and a regulation of Synod cannot touch them.

Correspondence p. 94.

See p. 10.

There is yet another reason why the Synod cannot, in this matter, grant new powers to the Bishop. The quality of Cathedral was superimposed upon the Parish Church under a contract between the incoming Corporation and the Corporation in possession. The terms of the contract are expressed in the words of the obligation of each Bishop who enters the Church. To make this clear, reference must be had to the primary contract. In 1850, when Bishop Fulford (according to English custom) stood at the door of the Parish Church called Christ Church, and requested to be installed, he took the usual installation oath at the hands of the Rector of the Parish Church, for the Dean and Chapter were not created until 1853, three years later. The mutual obligation then entered into between the two Corporations the Synod cannot touch by any direct canon, and if a canon be

Statutes of Lichfield

drawn in declaratory shape its form will not avail to protect it from an inquiry as to the facts.

Davidson vs. Baker.

That the Synod cannot do as it pleases, was shown in the case of Davidson *vs.* Baker. In that instance, an overwhelming majority declared Baker legally elected, but the Superior Court revised all the proceedings, and an order issued to compel the Secretary to erase Baker's name and insert Davidson's on its list of delegates. If the Synod then were to pass a canon traversing the Rector's patent it could only be carried into effect through the civil courts, from which an appeal would ultimately lie to the Queen in Council.

It has sometimes been doubted whether a right of appeal exists, but it must be evident that the Synod can-

Declaration of Bishops Prov Synod.

not go behind the declaration upon which all their legislation is built, and the condition precedent, without which no compact would have been made. This declaration may

Constitution of Synod.

be found at the commencement of the constitution. It "reads: "In particular we maintain the ancient doctrine "of the Church, that the Queen is rightfully possessed of the "chief government and supremacy over all persons within "her dominions, whether ecclesiastical or civil, as set "forth in the 37th of the Articles of Religion and we "desire that such supremacy should continue un-"impaired." Every clergyman of the Church of England subscribes to the 39 articles. Referring to this subject the late Metropolitan writes "As to the Royal suprem-

Pan Anglican Synod p. 24.

"acy I conceive that we can have no hesitation in "acknowledging it in the fullest sense in which it can "under the circumstances of our position be claimed or "exercised." * * * * This supremacy he defines as the "supreme right of the Crown to revise all judgments "given in any courts." In short, in the Church of

England, the Queen's supremacy is nothing else than her supremacy in her Courts.

The case of Christ Church is now put before the congregation fully. Many other considerations might be urged, but this statement would extend to an unreasonable length. Many of the facts contained in these pages are unknown to all but the older members of the Church, but now that there is a danger that an irresponsible body like the Chapter may be placed in a position in Christ Church Cathedral to interfere in its future government it is well that the congregation and all interested should understand the case with its history and legal bearings, on which alone a correct opinion can be formed as to the present issue.

APPENDIX A.

OPINION OF THE HONORABLE WILLIAM BADGLEY, LATE JUDGE OF THE PROVINCIAL COURT OF QUEEN'S BENCH.

MONTREAL, 28 NOVEMBER, 1874.

REVEREND AND DEAR SIR,

I have received from you the following letter, in which you say: "Referring to the accompanying papers "enclosed, will you inform me whether, in your opinion, "the claims of His Lordship the Metropolitan, Lord "Bishop of the Diocese of Montreal, over the Christ "Church Cathedral, the Parish Church of the Rectory or "Parsonage of the Parish of Montreal, as stated in His "Lordship's letter to me of May 2nd, 1874, are or are not "legal.

"Yours respectfully,

(Signed,) MAURICE S. BALDWIN,

"Rector."

Enclosed:

1. Copy of Letters Patent of Metropolitan.

2. Copy of Letters Patent of Rector.

3. Copy of Correspondence between Metropolitan and Rector.

4. Manuscript Report.

Regretting sincerely that you should have deemed such a reference necessary, I have the honor to say that your

letter and its accompanying documents have received my best consideration, especially the printed correspondence between the Lord Bishop of the Diocese and yourself as Rector of Christ Church, in reference to the claims made by His Lordship therein in connection with Christ Church Cathedral in this City, and to which you particularly direct my attention.

The claims suggested by His Lordship seem to have arisen from Christ Church having been considered exclusively as the Cathedral Church of the Diocese of Montreal, without attention to its precedent and continuous title of Parish Church of the Rectory of the Parish of Montreal, established long anterior to its added Cathedral distinction, and therefore, for the purpose of this reference, the two-fold character of the Church must be considered, and therewith incidentally, the rights therein of the Bishop of the Diocese and of the Rector of the Parish.

To do this satisfactorily, the claims in question will be adverted to and answered in the numerical order in which they have been made by His Lordship, previous to which, however, a few remarks are required as introductory to, but more or less intimately connected with the matters of difference submitted to me.

It is trite to say, that wherever the Church of England was established or its ministrations planted in British conquered colonies or dependencies abroad, the supremacy of the Crown in such church matters, and the cardinal point of Episcopal Government in connection with that Church, have been recognized as existing of right, without legislative allowance required therefor, or until otherwise ordered by colonial or local legislation, thereto sanctioned and authorized by the Crown.

These supreme rights inherent in the Crown necessarily included the appointment of Colonial Bishops in new countries as here, and the establishment of their dioceses and sees, and also the establishment of ecclesiastical divisions of the Bishopric called parishes, with the appointment of ministers called parsons, or rectors, who thereby became subjected to the authority and jurisdiction of the Bishop of the Diocese in which the parish was located, an ecclesiastical subordination, the necessary consequence of the episcopal principles upon which the church was founded.

The earliest Imperial legislation for Canada, the Statutes 14 and 31 George the 3rd, did not extend, nor were in construction allowed to extend, to hinder or prevent the exercise by the Crown of its inherent administrative supremacy, nor in any way to assume its direction or regulation ; but for better assurance, the Royal intentions for the support and advancement of the Church of England in the colony were embodied in the enactments of those statutes, and, among other intended means for the purposes intimated, the erection of parsonages and rectories was expressly declared and mentioned, for which endowments, from the ungranted provincial lands of the Crown, might be granted by the Executive authority of the province.

It will be sufficient to add that by the exercise of the supreme prerogative power, Bishops have been appointed in the Colony from time to time, with constituted dioceses and sees, amongst which the present separate Diocese of Montreal was constituted by Letters Patent in 1850, which appointed the first Bishop of the separate Diocese, constituting him and his successors in perpetuity Bishops of the Diocese of Montreal.

In like manner, by Letters Patent issued in 1820, the Church of England Parish of Montreal was established, and its boundaries defined, with one Parsonage or Rectory erected therein, presenting the named Rector and Parson of the parish, and ordaining the then existing City church of Montreal, called Christ Church, to be the Parish Church of the said Parsonage and Rectory; constituting the said named Rector or Parson and his successors to be Rectors or Parsons of the said Parish Church, and expressly subjecting him and them, as such Rectors, to the authority and jurisdiction of the Bishop of the Diocese as Rectors in England to their Diocesans there; also, erecting the said Rector and his successors, Rectors of the Parish, a sole corporation with perpetual succession, in other words a sole mortmain corporation, with power to acquire real estate, &c., and to determine the same, as should be authorized thereto by grant or license therefor under the Great Seal of the Province, in other words by Letters Patent, and finally endowing and investing the said Rector and his successors for ever, with the freehold and inheritance of the said Parish Church, and its appurtenances, and with the mentioned and described site of land on Notre Dame Street, in the said City, on which the said Christ Church was erected.

By the Diocesan Letters Patent of 1850, which are in part embodied in the Letters Patent of his Lord ship the Bishop as Metropolitan, the said Parish Church, called Christ Church, above mentioned, was thereby appointed to be the Cathedral Church of the Diocese of Montreal in the terms following: "That Christ Church "aforesaid, in the said City of Montreal, should thence-"forth be the Cathedral Church, and the See of the "said Bishop of Montreal and his successors in the

"said See," which appointment was afterwards acquiesced in by the Rector and Vestry of the Church, and which continued to be so known, until its destruction by fire in 1856.

This occurrence afforded the desired opportunity of substituting a new site and church for the old ones, necessitated from the confined extent of the former, and the inconvenience of the latter to the increasing numbers of its congregation, who in process of time had become located at inconvenient distances from the church, and therefore the old site on Notre Dame street was sold, and the new site on St. Catherine street in this City was acquired, upon which the new church has since been built, as the substitute of the old church; the change having been effected under the directions of the then Rector of the Parish, and with the express sanction and approval of the then Bishop of the Diocese, and towards these substituted purposes, the proceeds of the old site and the insurance money of the old church were duly applied, together with large contributions from the congregation and others interested in the erection of the new church.

Upon its completion, the name of Christ Church was appropriated to the new church, which became and has since been publicly recognised in the Acts and Records of its Diocesan Synod, in those of the Provincial Synod, and in the Acts of the Legislature having reference thereto, and also by the present Rector of the Parish and Bishop of the Diocese to be the Parish Church, called Christ Church, of the Rectory of the Parish of Montreal, constituted under the Parochial Letters Patent of 1820, and also the Cathedral Church of the Diocese of Montreal under the Diocesan Letters Patent of 1850.

It is important to ascertain the extent and effect of these several Letters Patent, because they are the only constituent titles of the Rector or of the Bishop to Christ Church, as the parish Church or Cathedral Church above mentioned.

By the Parochial Letters Patent, which have precedence in date, Christ Church was constituted the Parish Church of the Rectory of the Parish of Montreal, many years before the existence of the present Diocese of Montreal, and its Rector was expressly endowed and invested with the freehold and inheritance of the Parish church and its appurtenances, as a sole corporation, and his present successor in the Rectory of the Parish, "by his in- "duction into the substituted or new Church, was install- "ed as Incumbent into the full possession of the Church "with all the rights and appurtenances thereto belonging. "It is a principle of law that the induction of the Rector "fills the Church even against the King, and by conse- "quence the Church is completely full and the Clerk in- "ducted a complete Incumbentor possessor." By the Temporalities Act for this Diocese, 14 and 15 Vic. ch. 176, it is enacted "that the soil and freehold of all churches, "&c., erected or to be erected in the Diocese, shall be in "the parson or incumbent thereof and the churchwardens," but to this is added the express proviso, "that nothing "contained in this section shall extend to affect the "tenure of any parsonage or rectory now established "by Letters Patent." At that time, the Parochial Letters Patent were in full force, and nothing has since occurred to set them aside, or to oust the Rector from the Parish Church of his Rectory. Morever, the induction of the Rector was into the possession and seizin of the whole Church without distinction of parts by the

Letters Patent, nor has any divestment from him of any part of the Parish Church been since made by law or otherwise.

On the other hand, the Diocesan Letters Patent, issued thirty years after those for the Parish and Rectory, chiefly established the present Diocese of Montreal and appointed a Bishop thereto, constituting him and his successors in perpetuity to be the Bishops of the Diocese, and declaring the Parish Church of Montreal, called Christ Church, to be thenceforth the Cathedral Church and See of the Bishop of Montreal.

The Diocesan Patent did not and could not legally profess, either expressly or impliedly, to set aside and annul the Parochial Patent, nor to conflict with the granted rights and privileges of Christ Church as such Parish Church filled by its Incumbent, nor to divest its Incumbent from his possession or seizin thereof as Rector of the Rectory of the Parish of Montreal under his continuing Patent. It is manifest that the Diocesan Patent in this respect was limited to the personal introduction of the Bishop of the Diocese into Christ Church as his See, and to the conferring upon the Church as such Parish Church, the distinction of being thenceforth recognised and known as the Cathedral Church of the Diocese; beyond these, the Diocesan Patent conferred no Episcopal authority over Christ Church, or over the Parish Church, or over its Incumbent, except what by the general constitutions and canons of the Church of England, were the acknowledged rights and privileges of the Ordinary, belonging to him as Diocesan, in virtue of his appointment as Bishop of the Diocese.

In connection with the foregoing, by the Church Society Act of Montreal, 14 and 15 V. ch. 171, it is enacted,

that no spiritual or ecclesiastical right or jurisdiction shall be conferred upon either of the Bishops or of his successors or other ecclesiastical persons, &c., and this is repeated in similar terms in the Church Temporalities Act of the Diocese, 14 and 15 V. ch. 176. Both these were reserved Acts, and received the special sanction of the Crown.

Having detailed the foregoing circumstances of fact in connection with Christ Church, it is scarcely necessary to remark, how much the Church of England and its ecclesiastical establishments in this new country differ from their position in England, and that, except as to the general principles of the mother church contained in her constituent canons and expounded in her Church jurisprudence, which must be received with respect in all her branches as advisory and explanatory, the Ecclesiastical law of England has no force here, being composed of local legislative enactments which have not been expressly extended to this province, and of judicial decisions founded, for the most part, upon prescriptions beyond man's memory, or upon ancient church customs in England, entirely beyond our provincial Church establishments of yesterday; and, therefore, our provincial church law in such matters must be sought for in the rules and regulations of our provincial Diocesan Church Societies and Corporations, in the proceedings and decisions of our Diocesan and Provincial Synods, and in their exercise of the delegated powers expressly conferred upon them, or distinctly implied in the Acts of the Provincial Legislature having reference to them, with the addition of such general principles of our Municipal law, as might apply to the legal construction or extent and effect of the several Letters Patent above adverted to, as they affect Christ

Church in its two-fold character of Parish Church and Cathedral Church, which cannot be separated without setting aside the Patents therefor.

The only difficulty in answering the claims of the Lord Bishop arises from their persistent and exclusive reference to Christ Church, as the Cathedral Church only, but its original condition of Parish Church is not separable at mere wish; and hence though His Lordship's claims are partial and peculiar in their object, the conjunct character of Christ Church must be kept in mind in the answer given to them, and therefore under all the circumstances, the answer to His Lordship's first claim is, that Christ Church must legally continue to be known and distinguished as, at present, the Cathedral Church of the Diocese, until deprived of that distinction by competent authority, but without interfering with its character of Parish Church of the Rectory of the Parish of Montreal, or divesting the Rector of his rights and privileges therein as its Incumbent.

By His Lordship's second claim, the admission is required of His Lordship's personal right to preach in the Cathedral, and, in addition, to exercise the right, if he shall see fit, occasionally to introduce a stranger to preach in the Cathedral, on giving due notice to the Rector. Admitting the two-fold character of the Parish Church, the Bishop of the Diocese is legally entitled to preach in his Cathedral in like right as the Rector in his Parish Church, and, as each by virtue of his office is said to be severally resident in his Cathedral and Church, they are required to officiate and minister therein, and therefore neither can be legally prevented from the right to preach in Christ Church. Besides, as preaching has become an important part of public worship, both Bishop and Rector

have the legal right to preach in Christ Church, but the times and occasions are not expressly regulated by law, further than that the officiating duty of the Rector for his parish church is general throughout the year, whereas that of the Bishop in his Cathedral is merely temporary:—Phil- "limore says that the Bishop should officiate in his cathe- "dral on the chief festivals and in Lent and Advent," but in fact no certain rules prevail, and in England much is left in that respect to the custom of the church, but the Bishop, as head of the church in the diocese, should not be legally refused, when his wish in that respect is made known to the incumbent.

The second part of His Lordship's claim, occasionally to introduce, if he desire it, a stranger to preach in the Cathedral upon giving due notice to the Rector, does not rest upon the same right as the Bishop's personal claim, and the admitted necessity of the notice to the Rector, involves of itself the necessary consent therefor of the latter. It is, however, notorious, that the congregation assembled for worship in Christ Church is not distinctly a Cathedral congregation, but mere parishioners who attend the Parish Church service, under the general ministry of the Rector of the Parish who has the cure of souls therein.

Now the legal decision of this part of the claim rests upon the general principles and ordinances of the Church of England, in explanation of which, the *dicta* of Mr. Justice Bayley in Farnsworth vs. the Bishop of Chester, 4 Barn. & Cres. 570, are extremely apposite, and substituting *Rector of the parish* here for *Vicar of the Parish* in that case, and confining the judge's remarks to the spiritual obligations of the Rector, he says "his opinion "is founded upon the general position, that the spiritual

"obligation of the Rector cannot be interfered with, "namely his refusal to allow a (stranger) clergyman to "officiate, even when licensed by the Bishop of the "Diocese." He adds: "It appears to me that if the "Rector has the cure of souls, co-extensive with the "whole limits of his parish, that casts a very serious and "important duty upon him, and he has a right, and is "bound,as the *conservator parochiæ*, to take care that no "person shall deliver doctrine in that Parish, except "under his sanction and authority. It is said that the "Bishop will never appoint an unfit person, but if the "Rector has the cure of souls in his parish, he has a "right to act on his own judgment, and is not bound to "trust to the judgment of the Ordinary." The same was declared to be law in the case of the King vs. the Bishop of Exeter, 2 East 402, where the Vicar's consent was withheld, and it was assumed that he might disregard the license of the Bishop. In this matter of the allowance of the license, Doctor Lushington held in one of his judgments "the license of the Bishop emanates from his Episcopal "authority, but he could not grant it without the "consent of the Rector of the Parish, for the cure of "souls belongs exclusively to the Rector." And in a foot "note is added, "But it does not appear that the consent "of the Rector is necessary to enable the Bishop to "license, but only that the license is nugatory if that "consent is afterwards withheld." This was further exemplified by the Act 3 and 4 Vict. ch. 33, which enabled the Bishops and Ministers of the Protestant Episcopal Churches of Scotland and the United States of America to officiate in the churches of the Church of England and Ireland, that is, to perform divine service, preach or administer the Sacraments therein; which, however, was

not to be allowed without the license in writing of the Bishop of the diocese, and for one or two days only specified in the permission, and not even then without the "consent of the incumbent of the parish, which will, of "course, in every such case be essential."

The distinction is thus plainly drawn. The right to officiate and preach in his own church is personal in the Bishop, but cannot be extended to strangers whom he might wish to occupy the pulpit of Christ Church without the consent of the Incumbent, in accordance with the old rule that "a church or pulpit, *loco ecclesiæ*, once "filled, is filled even against the King," or as expressed by Lord Mansfield in 2 East, 462, cited above, who says "nothing can be so clear as that no person can use the "pulpit of the Rector without his consent," and, as it is held by authority that by the above Act 3 and 4 Vict., "the church in our Colonies is considered, for the pur-"poses of the Act, as the Church of England," its provisions are both instructive and applicable here, and moreover conclusive of the absolutely required consent of the Incumbent of the Parish in such case, and therefore the right, as such, claimed by the Bishop in this respect is not legal.

The third claim of His Lordship, that the ordering of the services in the Cathedral and the appointment of the clergy therein, shall be subject to the approval of the Bishop, is also quite partial in the exclusive character of Cathedral attributed to Christ Church, ignoring altogether its legally established parochial character, and thereby involving in its claimed allowance the absolute government of Christ Church by the Bishop, in the order of its services and the appointment of its officiating clergy therein. As to the church services, it is a general rule of the

Church, obligatory in parish churches as well as cathedral churches, that the general order of church service, as expressly enjoined by the Rubric and the Book of Common Prayer, is to be observed, and is not to be departed from by the Minister, yet subject to the directions of the Bishop, as Ordinary, in case of irregularities or in exceptional cases; but the manner in which that church service is to be performed, is at the direction and discretion of the Rector of the Parish, the officiating Minister. So long, however, as the directions of the Rubric are not departed from, the Minister cannot be interfered with: as where the direction is as to the saying or singing of a particular part of the service, it is for the Minister at his discretion to choose which alternative should be adopted, according as he might think best adapted to his congregation.

The right of approval claimed by the Bishop in the appointment of the clergy of the Cathedral practically involves the nomination of the officiating clergy of the Parish Church, and is not legally within the powers of the Bishop. The officiating clergy of the parish church, in addition to the Rector, are not cathedral clergy, *eo nomine* as the Dean and Canons, nor assistant ministers to the bishop of the diocese, but to the rector of the parish, and, like curates in England, are stipendiaries of the parish, being employed by the rector for a fixed stipend, paid by the parish funds, as assistants to him in his absence, or in the service and duties of the parish church. Under his general Episcopal authority as Ordinary, the Bishop can control and prevent the appointment of improper and inefficient clergymen to officiate in the church, but except within those supervising powers, which can only be exercised for cause, the approval of the Bishop of such clerical appointments, as a right, is not legal.

As to the fourth claim, the reservation of the stalls in the church for the Dean and Canons, distinct from those used by the choir, I have little information that would justify my expressing a legal opinion. Cathedral stalls are described as the *pews or seats of clergymen*, and, it may be concluded, are not convertible to the use of other persons. I believe, however, that the Dean and the other Canons, except yourself, Reverend Sir, have duties to attend to in their own churches, and very rarely attend the services in Christ Church, so that my reluctance to give a legal opinion upon this claim will be of no importance.

The printed correspondence tells me that the fifth claim calls for no legal opinion. Nor will I undertake to advise upon your notes A and B which have been added as glosses to His Lordship's claims as set out in his letter of the 2nd May. The really important claims have all, I think, been distinctly answered.

I have the honor to be,
Reverend and dear Sir,
Your obedient servant,
W. Badgley.

APPENDIX B.

OPINION OF WILLIAM H. KERR, Esq., Q.C., D.C.L.

Previous to the passing of the 19 and 20 Vict., c. 121, the members of the Church of England in the Diocese of Montreal formed but a voluntary association governed by the rules of the United Church of England and Ireland, but only so far as such rules were applicable to the peculiar circumstances of the Diocese at the time as modified by the various Provincial Statutes relating to the Temporalities of the Church.

The Church of England is essentially an Episcopal Church, and the Bishops thereof exercise certain jurisdiction and have certain powers over the inferior clergy and the laity in their respective dioceses.

The right of appointment to Bishoprics in England has, ever since the reign of Henry VIII, been virtually vested in the Sovereign, and the right of the Sovereign of the United Kingdom as head of the Church to erect Dioceses, and appoint Bishops thereto, naturally flowed from the adoption by the Church of England in Canada of the rules and ordinances of the Church of England in England as the law by which the association was to be governed.

By the Letters Patent appointing Dr. Fulford to be Bishop of Montreal, he on his consecration became Bishop of the Diocese, and was thereby invested with all the powers and jurisdiction of a Bishop therein, provided for or given to that dignitary by the rules and ordinances

of the United Church of England and Ireland in England, but only so far as they were applicable to the peculiar circumstances of the then Province, as modified by the above-mentioned Provincial Statutes.

The Letters Patent conferred upon him no powers. Any power that he may have possessed, any jurisdiction that he could have exercised, were derived solely from the Constitution (if it may be so called) of the Association of which he was a Bishop.

That portion of the Letters Patent which declared Christ Church to be the Cathedral Church of the Diocese was inoperative, save by the consent of the person in whom the property of that Church was vested. The Crown had no rights therein, consequently could convey none to the Bishop. The basis whereon rested the Bishop's rights in Christ Church was the consent of the authorities of that Church, so far at least as any other rights were concerned than those he possessed in the other churches of his Diocese.

By the consent of the authorities a throne for the Bishop was erected in Christ Church, and it may be assumed that so far a consent was given by the proper authority that that church should be considered as the Cathedral Church of the Diocese, but no further consent was given, nor was it a matter of agreement that it should lose its character of Parish hurch of the Parish of Montreal, and be solely the Cathedral of the Bishop of Montreal. It may also be considered as very doubtful whether the corporation or corporations in which was vested Christ Church, and which under the original grant and the Temporalities Acts managed the affairs of that Church, could validly have consented to merge its character of Parish Church in that of Cathedral of the Diocese.

Not the slightest analogy exists between the Dean and Chapter of a Cathedral in England and the Dean and Canons named and appointed by the late Metropolitan. It may be very questionable whether his Lordship had the power to create the office of Dean, and to appoint the late Rector to that office, less doubt attaches perhaps to the appointment of the Canons, but it cannot be pretended that that portion of the rules and ordinances of the Church of England relative to Cathedrals was applicable to the peculiar circumstances of the Diocese of Montreal in 1850.

In England the Dean and Chapter of a Cathedral are a corporation in which is vested amongst other things its government. It cannot for one moment be pretended that the present Dean of Montreal and the Canons have any right of government in Christ Church.

In England, in the words of Dean Alford, Cathedrals "at present are governed by corporate bodies of their own, are held to belong exclusively to those bodies, being by them willingly or reluctantly *lent* for diocesan purposes when so required, but being in fact the private chapels of the Deans and Chapters. These Deans and Chapters reside under their walls but take no part whatever, as members of the Cathedral, in Diocesan work."*

As to the rights of a Bishop in the Cathedral of his Diocese, much doubt exists in the minds of the English Bishops themselves, as is apparent by the evidence of the Bishops of Lichfield, Lincoln, Carlisle and Salisbury,† given before the Royal Commission appointed "to enquire into the state and condition of the several Cathedrals and collegiate churches in England and Wales, and

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* 12 Con. Review, p. 40.

† 1 Report, pp. 566, 581, 583, 592.

into the duties of the members and ministers thereof, &c."

The rights of the Bishop of Montreal in Christ Church in excess of those he possesses in the other churches of his Diocese are based, as already mentioned, on the consent of the authorities of that church. Having consented to the erection of the Bishop's throne, it may be conceded that thereby the right to preach therein was admitted, but, as the Rector has the right of preaching throughout the year, matters should be so arranged that the Bishop should preach on giving reasonable notice to the Rector.

The claim of His Lordship to introduce occasionally a stranger to preach in the Cathedral does not appear to me to be well founded in law. The Rector is responsible for the doctrine preached in his Church, he is its ruler, consequently his consent to a stranger preaching in Christ Church is necessary.

So long as the Rector conforms to the rules of the Church in the ordering of the services, I cannot see that the Bishop has any right to interfere.

The appointment of the clergy of Christ Church subject to the approval of the Bishop would have the effect of transferring to him the right of nomination and appointment of the Rector's deputies. I can see nothing to justify his claim either in the custom of the Diocese or in the law regulating the Church of England in the Province of Quebec.

The Dean and Canons, as already remarked, have not the same right in Christ Church as a Dean and Chapter have in a Cathedral in England. They are but honorary officials at the best, having no right of property in the Cathedral, and unable to urge a claim as of right to stalls. If there has never been any consent on the part

of the authorities of Christ Church, that stalls should be appropriated to their exclusive use, I am of opinion that the fourth claim of His Lordship cannot be admitted.

The fifth claim, I believe, may be considered as conceded.

WILLIAM H. KERR.

Montreal, 14th Dec., 1874.

APPENDIX C.

For convenience of reference, and in order to avoid encumbering the narrative portion of the Report, the following answers given by the highest Cathedral authorities in England to the Royal Commissioners in 1854 are here appended.

That Commission made a searching inquiry into all matters concerning Cathedrals, and the condition of the English Cathedrals at that time must be presumed to be the condition intended by the Queen's Patent of 1850. Among the members of this distinguished Commission were—The Archbishops of Canterbury and York, the Bishops of London and Oxford, Dean Hook, the Earl of Harrowby, the Marquis of Blandford, Sir Wm. Page Wood (afterwards Lord Chancellor), and Sir John Dodson. The pages given in the margin refer to the Report of the Commissioners and its Appendix.

EXTRACTS FROM THE EVIDENCE OF THE DEANS AND CHAPTERS.

DEAN AND CHAPTER OF CANTERBURY.

Page 9. *Q.*—What are the rights of the Bishop with respect to the Cathedral Church?

A.—We know of no right which has ever been claimed by the Bishop or disputed by the Chapter.

D AN AND CHAPTER OF ST. PAUL'S.

Q.—What are the relations between the Bishop and the Chapter as defined by statutes, charter or composition? Page 38.

Q.—What are the rights of the Bishop with respect to the Cathedral Church?

A.—The Bishop is the Visitor.

DEAN AND CHAPTER OF DURHAM.

Q.—What are the powers of the Visitor?

A.—To visit in person or by his Visitor, to examine on oath the Dean, the Canons, the Minor Canons, and all the officers of the Church, to punish and reform and to do all such things necessary for the rooting out of vice as are known to belong to the office of Visitor; and all the above mentioned are, as to all the premises, bound to obey him. Page 63.

Q.—What are the relations between the Bishop and the Chapter as defined by charter, statutes or composition?

A.—The relations of the Bishop to the Chapter are not expressly defined by charter, statute, or composition. They are considered indeed to be the relations of a body having certain duties to perform, and living under certain statutable rules and regulations, to the authority appointed by the Crown to secure the performance of those duties and the observance of those rules and regulations. But even these are relations to the Bishop as Visitor rather than as Bishop.

Q.—What are the rights of the Bishop with respect to the Cathedral Church?

A.—The rights of the Bishop with respect to the Cathedral Church are:—To appoint the Canons and the Honorary Canons, to receive the pre-eminence in honour and dignity before the Dean, the Canons, and all the officers of the Church, to officiate in the Cathedral whenever it may please him to do so, either in the service, or in preaching, or in the burial of the dead, and to deliver the benediction whenever he may be present.

DEAN AND CHAPTER OF WINCHESTER.

Page 81. *Q.*—What are the rights of the Bishop with respect to the Cathedral Church?

A.—None, except as Visitor.

DEAN AND CHAPTER OF WELLS.

Page 102. *Q.*—What are the rights of the Bishop with respect to the Cathedral Church?

A.—We know of no absolute rights of the Bishop with respect to the Cathedral Church, but we are on every occasion ready to pay every deference to his wishes.

DEAN AND CHAPTER OF CARLISLE.

Page 120. *Q.*—What are the relations between the Bishop and the Chapter, as defined by charter, statutes or composition?

A.—The Bishop of Carlisle is Visitor, and has power to preach in the Cathedral when he pleases.

Q.—What are the rights of the Bishop with respect to the Cathedral Church?

A.—The question is answered above.

DEAN AND CHAPTER OF CHESTER.

Q.—What are the relations between the Bishop and the Chapter as defined by charter, statutes, or composition? Page 139.

A.—The relation of the Chapter to the Bishop, as defined by the charter of Henry VIII, is this: they are the two component parts of the Cathedral Church.

The relation of the Chapter to the Bishop as Visitor has been described. He is not otherwise referred to in the statutes, except as instituting the Dean and Canons.

Q.—What are the rights of the Bishop with respect to the Cathedral Church?

A.—No other definition of the rights of the Bishop is given by charter or statutes than those already quoted. No question on this subject has arisen in the Cathedral.

DEAN AND CHAPTER OF CHICHESTER.

Q.—What are the relations between the Bishop and Chapter, &c.? Page 150.

A.—The statutes of the Cathedral must be confirmed by the Bishop to give them validity.

Q.—What are the rights of the Bishop with respect to the Cathedral Church?

A.—The appointment of prebendaries and the use of the church for ordination, besides the rights of a Visitor.

DEAN AND CHAPTER OF ELY.

Q.—What are the relations between the Bishop and Chapter, &c.? Page 176.

Q.—What are the rights of the Bishop with respect to the Cathedral Church?

A.—The Bishop appoints to the Canonries (two excepted,) and is the Visitor of the Chapter, but there is no statute which defines his powers in the Cathedral when not acting as Visitor.

DEAN AND CHAPTER OF EXETER.

Page 193. The relation of the Bishop to the Chapter is that of Visitor. The rights of the Bishop in the Cathedral are those of Bishop of the See. The Chapter are not aware of any definition of such relation by Royal charter, by the statutes, or any composition. The present Bishop holds with the bishopric the dignity and office of Treasurer and a place of Canonry.

DEAN AND CHAPTER OF GLOUCESTER.

Page 211. *Q.*—What are the rights of the Bishop with respect to the Cathedral Church?

A.—The Bishop is entitled to a seat in the Cathedral Church, and is Visitor of the Chapter.

DEAN AND CHAPTER OF BRISTOL.

Page 221. *Q.*—What are the rights of the Bishop with respect to the Cathedral Church?

A.—None by statutes.

DEAN AND CHAPTER OF HEREFORD.

Page 234. *Q.*—What are the powers of the Visitor?

A.—He is interpreter of the statutes.

Q.—Are his general powers modified by any special custom?

A.—His powers are conferred by the statutes.

Q.—What are the relations between the Bishop and the Chapter, &c.?

A.—Visitorial.

Q.—What are the rights of the Bishop with respect to the Cathedral Church?

A.—Those of a Visitor.

DEAN AND CHAPTER OF LICHFIELD.

Q.—What are the rights of the Bishop with respect to the Cathedral Church? Page 247.

A.—The rights of the Bishop with respect to the Cathedral Church are to occupy his Episcopal Throne on the south side of the Choir; a seat near the Communion Table; the central stall in the Chapter House, and the Consistory Court on the south side of the south aisle of the Choir; to preach and perform the divine offices in the Cathedral as often as he thinks proper; to have access to the registry of the Capitular body, and to consult, without payment of any fee, the documents which it contains.

DEAN AND CHAPTER OF LINCOLN.

Q.—What are the rights of the Bishop with respect to the Cathedral Church? Page 262.

A.—The Bishop has the right of pre-eminence in the Cathedral; he holds his ordinations, visitations, and confirmations there; his Consistory Court for the diocese is held in part of the Cathedral appropriated to that purpose.

DEAN AND CHAPTER OF MANCHESTER.

Q.—What are the rights of the Bishop with respect to the Cathedral Church? Page 286.

A.—The same as those of the Bishop of Ripon with respect to the Cathedral of Ripon.

DEAN AND CHAPTER OF NORWICH.

Page 294. *Q.*—What are the rights of the Bishop with respect to the Cathedral Church ?

A.—He has his throne in which he is installed ; seats for his family and servants. Until 1850 he appointed certain Sunday preachers from the Diocese, since which time the sermons have been preached by the Dean and Canons. He has his own appointed days of preaching. He frequently assists in the celebration of divine service, and he holds his ordinations, confirmations and visitations in the Choir.

DEAN AND CHAPTER OF PETERBOROUGH.

Page 308. *Q.*—What are the rights of the Bishop with respect to the Cathedral Church ?

A.—The right of visiting the Dean and Chapter once in every three years or oftener, if need be, and of preaching in the Cathedral whenever he thinks proper.

DEAN AND CHAPTER OF RIPON.

Page 336 *Q.*—What are the rights of the Bishop with respect to the Cathedral Church ?

A.—The Order in Council will show what the rights of the Bishop are with respect to the Cathedral Church.

This Order in Council is not accessible in this country, but the statutes of the Cathedral based upon it, confirmed in 1844, contain the following provisions :

"No order or direction respecting the Cathedral, or
Page 326. any person or persons belonging thereto or officiating

therein either as a Cathedral or a Parish Church, shall be given, save as hereinafter mentioned, but by the Dean or in his absence by the Canon in residence."

"None but the appointed clergy of the Cathedral shall, otherwise than is mentioned in the order book, officiate in the discharge of any duty belonging or appertaining thereto, either as a Cathedral or a Parochial Church." Page 325.

"The sermons at visitations, confirmations, &c., will be under the direction of the Bishop and Archdeacons, who will also themselves occupy the pulpit when they are disposed to do so, but on all occasions due notice of the intention is to be given to the Dean, or in his absence to the Canon in residence." "Any other dignitary may be allowed to preach with the like notice and consent." Page 326.

"The Minster is used by the parishioners of Ripon to all intents and purposes as a Parish Church, although the maintenance of the building and the freehold of it belong solely to the Dean and Chapter. All the offices of the Church are performed within it, the registers are in the Dean's possession, and he performs all the duties of a parish priest with the assistance of the two vicars who act under him as his curates in the parish." Page 319.

DEAN AND CHAPTER OF ROCHESTER.

Q.—What are the rights of a Bishop with respect to the Cathedral Church? Page 357.

A.—The general supervision of the capitular body as implied by the statute giving visitorial power.

DEAN AND CHAPTER OF SALISBURY.

In this Cathedral the Bishop is a prebendary and a Canon.

Q.—What are the rights of the Bishop with respect to the Cathedral Church? Page 419.

A.—The Bishop has the right to celebrate the Holy Communion. 2. The Bishop, at any rate by long custom, holds his visitations, confirmations and ordinations in the Cathedral Church. 3. There is a table by which provision is made for sermons for all the Sundays and chief festivals with the exception of Holy Thursday, but no days are set apart for the Bishop; whether this omission implies or negatives any claim of right, we know not. 4. The Bishop's Court has been ever held in some part of the Cathedral.

DEAN AND CHAPTER OF WORCESTER.

Page 451. *Q.*—What are the rights of the Bishop with respect to the Cathedral Church?

A.—We are not aware of any, except those included in his office of Visitor.

DEAN AND CHAPTER OF WESTMINSTER.

Page 461. "The Church of Westminster being a Collegiate Church and not a Cathedral, and being also a Royal peculiar, is not subject to Episcopal jurisdiction.

DEAN AND CHAPTER OF YORK.

Page 25. *Q.*—What are the rights of the Bishop, with respect to the Cathedral Church.

A.—The Dean and Chapter have no peculiar definition of these relations to state.

After the Deans and Chapters of all the Cathedrals of England had been examined, evidence was taken from some of the Bishops. The following extracts will show their opinions as to their rights.

ANSWERS OF THE BISHOPS.

THE BISHOP OF LICHFIELD.

"The Dean, either by himself, or in conjunction with "the Chapter, has (so far as I know) the direction of the "services there, the appointment of the persons con- "nected with them, and the administration of everything "belonging to the Cathedral Church: and I see no reason "why the exercise of this power should be transferred to "the Bishop, or exercised by the Dean in conjunction "with him." Page 581.

THE BISHOP OF LINCOLN.

"The Bishop should, I think, have the option of "preaching when he sees fit in the Cathedral Church, "giving due notice of his intention to the Dean or "Canon in residence; and he should avail himself of his "power occasionally, or on certain stated days. That he "should *usually* preach there I do not think, believing "that his influence will be more beneficially exercised "by preaching frequently in the parish churches in "the diocese. At Lincoln Cathedral but one turn in the "year falls to the Bishop; and that not as Bishop but as "Canon of Buckden." Page 583.

BISHOP OF CARLISLE.

"I am not aware that any closer connection between "the Bishop and the Cathedral is either practicable or "desirable." Page 566.

BISHOP OF SALISBURY.

"I certainly do think that there is room for improve- "ment in the relation of the Diocesan to his Cathedral. Page 592.

"His present relation is that of having extraordinary "jurisdiction as Visitor, but not ordinary jurisdiction as "Bishop. He has not in consequence any right to "preach, or to give any such directions as he might do "in any other church in his diocese."

BISHOP OF WORCESTER.

Page 596. "So completely has custom vested all control over the "Cathedral in the Dean, that it is the invariable custom "at Worcester for the Bishop to *ask leave* of the Dean "before he holds an ordination in the Cathedral. I have "never objected to this."

CHRIST CHURCH CATHEDRAL, OXFORD.

The answers of the Dean and Chapter to the Commission are too diffuse to abstract, and scarcely apply to the present question. The Bishop of Oxford is not even Visitor of this Cathedral, and it can only be visited by the Crown. The Bishop's "Cathedra" is there, and when a vacancy occurs the letters missive of the Crown (congé d'elire) are directed to the Dean and Canons, who go through the form of election usual in England.

From the preceding extracts a clear idea may be gained as to what are the usual rights of an English Bishop in the Cathedral Church of his Diocese. There are no churchwardens in a Cathedral and it is evident that the freehold of the fabric and the entire government of such churches is in a corporation styled the Dean and Chapter, of which the Bishop is not a member. This corporation is always convoked by the Dean. In capitular business the Bishop has no voice, unless he
Page 416. happens to hold a place of Canonry. Upon special occasions the Dean is obliged to summon a Chapter upon the

mandate of the Bishop, but, although the Commissioners reported that it was desirable that the Bishop himself should have the power to summon the Chapter, no change was made. Royal Commission Third Report p. VIII.

The Chapter has moreover diocesan functions. It *(pro forma)* elects the Bishop, but must always elect the nominee of the Crown. By common right and ancient usage the Dean and Chapter administered the spiritualities of a Diocese during the vacancy of a See. This function has now fallen into the hands of the Archbishops, but on the vacancy of an Archiepiscopal See the Dean and Chapter still administer the spiritualities of the Province. In all Dioceses the concurrence of the Dean and Chapter is necessary to confirm the Bishop's leases. The executive Committee of a Canadian Synod correspond nearly to the English Chapter in such functions.

The advisory functions of the Chapter have, for many centuries, fallen into utter desuetude, certainly since the Reformation, and probably since the 14th century. Some of the Bishops think that this function might be revived, but most of them do not. Report of Royal Commission.

The conclusion is therefore evident that the Corporation in Christ Church which corresponds *(within the walls of the church)* to the English Corporation of Dean and Chapter is the Rector of the Parish. The Dean and Chapter of Montreal are not an incorporated body—they own no church—and their functions (if such there be) must be advisory or diocesan, and cannot in any way affect the Cathedral Church. They have met not probably more than five times during the twenty years of their existence. No traces of their influence can be found in the Diocese and it is doubtful whether they themselves have any records of their doings in the shape of minutes. In Canada the Synod (a much more primitive body than

a Chapter) performs those advisory functions which in the middle ages were appropriated to Chapters. If then it be now desired that the Dean and Canons should perform the functions of a modern English chapter, it will be necessary to obtain an Act of Parliament to abolish the Rector ; but if it be desired that they should perform the functions of a mediæval chapter, it will be necessary to obtain an Act to abolish the Synod.

Regarding their stalls it should be observed that, although the freehold of the church is in the Rector, the allotment of seats is, by the law of Canada, in the Rector and Churchwardens, who are a corporate body empowered to that end. It is the placing of the Bishop's seat in a church which creates it a Cathedral—nothing else is required for the complete definition of the word.

Hook's Church Dictionary. Webster's Dictionary.

It must be evident from these extracts that, in a Cathedral the rights of a Bishop in England are very limited. If any doubt can remain, the following extract from the first Report made by the Commissioners must remove it:

Page X.

" There is no express provision for the Bishop's taking " part in the Divine Service, nor any definition of his " rights and duties, as regards the Cathedral Church ex- " cept as Visitor, which office is generally assigned to " him "

In their third and final report the Commissioners make various recommendations, and among others the following :

Page XIV.

" That it be made clear by declaratory enactments " that the Bishop has the right of preaching, and of per- " forming all the ordinances and ceremonies of the Church " in the Cathedral whenever he shall think fit."

If Bishops in England have the powers claimed in Canada, why did the Commissioners ask for the above enactment? No such enactment was in fact made.

APPENDIX D.

A maxim has often been cited in common conversation on this case which, not having appeared in the correspondence, did not properly call for notice in the Report. It is "that the Cathedral is the Parish Church of the "Diocese." Sir Robert Phillimore comments on the maxim in the Exeter Reredos case. He says: "It is not "to be supposed that the maxim that the Cathedral is the "Parish Church of the Diocese would entitle all the "inhabitants of the Diocese to be cited. It could not be "seriously maintained that the Dean and Chapter of St. "Paul's must obtain a faculty from the Bishop's Consis- "tory to render legal the embellishments now in process "of being effected in their Cathedral, in which case all "the parishioners of London (and indeed of the whole "Diocese) would have a right to be cited before the "faculty issued."

The absurdity of attaching any practical value to a vague maxim of that sort is evident; for if all the inhabitants of the Diocese of London had a voice in the arrangements of the Cathedral of St. Paul's the work would soon stop.

There is this to be said regarding an English Cathedral that it has no parish of its own and therefore might in some respects be imagined to belong to the Diocese; but Christ Church has always had a distinct Parish defined by law. The Synod (having procured an Act of Legis-

lature for that purpose) has recently curtailed the Parish of Montreal to less than one-tenth of its original limits; so that in fact a less area has been assigned to Christ Church than has been granted to some churches one half its size. Of this area a large portion on the one hand is in the business part of the city where there are few dwellings, and a large portion upon the other is covered by the Mountain Park. If it be desired now to extend the Parish over the whole Diocese another Act might perhaps be got to enable the Synod to go to the other extreme.

APPENDIX E.

CORRESPONDENCE.

BISHOP'S COURT, April 27th, 1874.

MY DEAR BALDWIN,

You will not I think be surprised when I tell you that my connection with the Cathedral is becoming more and more embarrassing, and until some fresh arrangement is made I feel that I cannot attend the service with any degree of comfort.

I allude to the entire ignoring of my position in what I have always wished to consider as the Cathedral Church of my Diocese.

There is some idea of bringing the matter before the Synod; but before encouraging such a step I feel that it will be better to call our Chapter together, when I could speak more freely and amicably of the grounds of my complaint.

I propose therefore to call a meeting in the Chapter House, on Wednesday, May the 20th. I name that day, as I think it will be more convenient than any other.

Yours very faithfully,

A. MONTREAL.

May 2nd, 1874.

My dear Lord,

I received on Thursday evening your letter of the 27th, and most sincerely regret that your Lordship should see any cause in the present management of the Cathedral to interfere with your pleasure in attending, or to lead you to withdraw your friendly sympathies.

Before calling the meeting of the Chapter to which you allude, I would take it as a kindness if your Lordship would freely state in writing that which you consider to be a reasonable ground of complaint, in order that, if possible, a speedy and amicable solution of the difficulty may be arrived at.

With all respect,

Your obedient servant,

Maurice S. Baldwin.

The Most Rev.

The Metropolitan.

Bishop's Court, May 2nd, 1874.

My dear Baldwin,

However unwilling I might be to enter into particulars on paper, your request that I should do so is so reasonable that I cannot refuse it, and I am sure you will prefer that I should frankly tell you what my grievances are respecting the Cathedral.

First, however, let me say that there are many *little* things which have from time to time annoyed me, as indicative of a wish to exalt the Parochial character of

the Church, at the expense of its Cathedral character, and which I cannot mention in writing.

But the main points which I complain of are the following:—

1. That as Bishop of the Diocese I do not enjoy the right of preaching in my own Cathedral, or of introducing a preacher when I desire to do so; but I am forced to make the proposal subject to a refusal.

The inconvenience of this I specially felt two months ago, when, after having preached a sermon on Public Worship which I proposed to continue on a subsequent Sunday, you threw an obstacle in the way (intentionally or unintentionally) which made me resolve never again to subject myself to a similar objection. I feel that in my own Cathedral this should not have occurred.

2. That inasmuch as the Cathedral is my proper church, and I must needs be specially interested in all its ministrations, there has been little or no consideration of my wishes either as to the mode of conducting the services, or as to the introduction of fresh members of the clerical staff. During the late Dean's incumbency it was otherwise in both these respects.

3. That my position in the Chancel has, especially of late, been extremely distasteful, owing to the irreverent conduct of certain of the Choir, which must be very disturbing to any one who wishes to take part in the service. Of this I have more than once complained to you, but without the least effect.

4. That I have on several occasions made suggestions for the improvement of the Cathedral worship, but these have been disregarded, and no steps taken to bring them

before the proper authorities; whereas it would have been but an act of courtesy to have done so.

5. That the position of the Dean and Canons has of late been scarcely recognized, their stalls having been virtually obliterated by the erection of new seats for the Rector and his assistants in a prominent, but totally distinct part of the church, and the capitular stalls having been gradually absorbed by the choir.

6. That for many months past no pains have been taken by the Cathedral clergy for the decent celebration of Divine Service on week days, as was always the case previous to your incumbency, and according to the prevailing custom in all Cathedrals.

These are some of my main complaints, which at your request I have put upon paper; but there are many things which have combined painfully to convince me that the feeling which now prevails with those who have the management of the Church is to build it up in its Rectorial capacity, but gradually to divest it of its original Cathedral character, ignoring as much as possible the presence and authority of the Bishop.

I send you my grievances in the same spirit as that in which you asked for them.

Yours very faithfully,

A. MONTREAL.

The claims of the Bishop are as follows:—

1. That, in accordance with the Queen's Patent, the Parish Church, called Christ Church, shall always be recognized as "the Cathedral Church of the said Bishop of Montreal."

2. That the Bishop's rights either himself to preach in the Cathedral, or occasionally to introduce a stranger, if he shall desire it, on giving due notice to the Rector, be hereby admitted.

3. That the ordering of the Services in the Cathedral, and the appointment of the clergy thereof, shall be subject to the approval of the Bishop.

4. That of the stalls hitherto assigned to the Dean and Canons, a sufficient number shall be appropriated for their exclusive use, and shall be kept distinct from those used by the Choir.

5. That due provision shall be made for Daily Service in the Cathedral, during at least seven months of the year, according to the custom prevailing heretofore in this Church, as well as in Cathedrals generally.

In order to bring matters to an amicable issue, the Bishop has drawn up the above claims, which he feels to be the minimum of what he may fairly require, and to which he conceives that the Rector (having the dignity and well-being of the Cathedral at heart, as well as himself) should be willing to assent.

The Bishop desires further to state his decided opinion, that the present location of the Rector and his assistants, in a block of stalls, at a distance from the Choir, from the Capitular Stalls, and from the Episcopal Throne, is very objectionable, as tending to create a distinction between the Parochial and Cathedral Clergy, and effectually separating the Choir from the main body of worshippers.

BISHOP'S COURT, May 11, 1874.

MY DEAR BALDWIN,

As I leave for Bedford this afternoon, only returning here to-morrow evening for one night, I must remind you that I have received no answer to my last letter. I am anxious to receive your reply, as I shall be guided by it as to whether it will be desirable to send out notices for a Chapter meeting on the 20th. As my demands were as moderate as I could make them in justice to myself, I hoped that you would have felt desirous at once to concur in my proposals.

Yours very faithfully,

A. MONTREAL.

MONTREAL, May 12th, 1874.

MY DEAR LORD,

Finding my answer to your last communication may be delayed a few days further, owing to my anxiety to give it all due consideration, I write in the meantime to explain that which, I grieve to say, has caused your Lordship trouble. You refer to a sermon which you proposed to preach, and in the way of which, you say, I intentionally, or unintentionally, threw an obstacle.

Now, my Lord, I can only say I acted unintentionally in the matter; and the furthest idea from my mind was that of either opposing or slighting you. Seeing, however, by your Lordship's letter that I really did wound

you, I offer you my most sincere and humble apology, as I have no other wish than to act with all due courtesy and respect.

Your obdt. servant,

MAURICE S. BALDWIN.

MY DEAR BALDWIN,

I willingly accept your explanation about the sermon, and believe that you did not *intentionally* prevent my preaching it.

As some of our Canons live at a distance, and will require a few days' notice in the event of a meeting on the 20th, I hope that you will let me hear from you at Lachine on Saturday.

Yours faithfully,

A. MONTREAL.

Bishop's Court, May 13, 1874.

MONTREAL, May 14th, 1874.

MY DEAR LORD,

In answer to a communication received from your Lordship on Friday the 8th of May, through the Very Reverend the Dean, I beg to submit the following reply, humbly hoping your Lordship will admit the justice of my several conclusions.

As the subjects brought forward by your Lordship are of the gravest importance, I shall consider them seriatim.

Claim No. 1.—"*That in accordance with the Queen's Patent, the Parish Church, called Christ Church, shall be always recognized as the Cathedral Church of the said Bishop of Montreal.*"

In reply to this I may state that, not having seen the Queen's Patent, I cannot affirm more than that I am willing to recognize the legal rights of the Bishop of Montreal in all matters.

Claim No. 2—"*That the Bishop's right, either himself to preach in the Cathedral, or occasionally to introduce a stranger, if he should desire, on giving due notice to the Rector, be hereby admitted.*"

I cannot admit these claims, as they interfere with the rights of the Rector of the Parish of Montreal under the Patent. In order, however, to avoid all mistakes in the future, I promise, as an act of courtesy, to furnish your Lordship, on the first of every month, with a blank form of the services to be held in the Cathedral throughout that period, on which your Lordship may write down when it will be your pleasure to preach, which appointments shall be loyally observed.

With regard to strangers, while I shall ever be desirous to meet your Lordship's wishes, occasions might arise when I would be compelled to assert my right of objection.

Claim No. 3.—"*That the ordering of the services in the Cathedral, and the appointment of the Clergy thereof, shall be subject to the approval of the Bishop.*"

As this claim is wholly at variance with the liberty granted to the Rector by the Patent, it is inadmissible.

Claim No. 4.—"*That of the stalls hitherto assigned to the Dean and Canons, a sufficient number shall be appropriated for their exclusive use, and shall be kept distinct from those used by the Choir.*"

On all occasions when the Cathedral Chapter may be expected at Divine Service, due provision will be made in the Stalls for their accommodation.

Claim No. 5.—"*That due provision shall be made for daily Service in the Cathedral, during at least seven months of the year, according to the custom prevailing heretofore in the Church, as well as in Cathedrals generally.*"

It is my wish and intention to hold daily Service in the Cathedral as heretofore.

Note A.—"*The Bishop desires further to state his decided opinion that the present location of the Rector and his assistants, in a block of stalls at a distance from the Choir, from the Capitular Stalls, and from the Episcopal Throne, is very objectionable, as tending to create a distinction between the Cathedral and the Parochial Clergy, and effectually separating the Choir from the main body of the worshippers.*"

The seats now used by the Rector and his assistants were erected by the Church authorities for the purpose of giving more suitable accommodation and without any intention of creating a distinction between the Cathedral and Parochial Clergy.

I would also respectfully disclaim all idea whatever of building up the Church in its Rectorial capacity at the expense of its Cathedral character.

Note B.—"*That I have on several occasions made suggestions for the improvement of the Cathedral worship, but these have been disregarded, and no steps taken to bring them before the proper authorities, whereas it would have been but an act of courtesy to have done so.*"

Of the suggestions made by your Lordship as to the improvement of the Cathedral worship, some could only be settled by myself; others needing the consent of the Church authorities, I found had already been investigated, but, owing to the fact that the approval of the proprietors of pews was necessary, were considered impracticable.

Your Lordship has been pleased to inform me of your intention to convene a meeting of the Dean and Chapter in the Chapter House of the Cathedral.

Now, my Lord, while I do not wish to exercise my right of objection to the use of the Cathedral building, your Lordship will readily perceive I cannot attend the meeting convened for the purposes above specified.

With all respect,

Your Lordship's obedient servant,

MAURICE SCOLLARD BALDWIN,

Rector of the Parish of Montreal.

TO THE MOST REV. THE METROPOLITAN.

LACHINE, May 18th, 1874.

MY DEAR CANON BALDWIN,

It grieves me to say that your letter of May the 14th is anything but satisfactory to me. The spirit in which it is written only confirms me in the opinion, which I

had already expressed, that your aim seems to be to "build up the Parochial, rather than the Cathedral character of your Church."

As regards the first point mentioned, namely the recognition of the Church as "the Cathedral Church of the Bishop," since you seem unwilling to accept the statement without having it verified, I herewith send you a printed copy of the patent, from which you will see that I copied it correctly.

As to my preaching in the Cathedral, I cannot consent to do so as a mere matter of *courteous permission*, though I am persuaded that the courtesy you promise I should always have received at your hands. Had you assented to my proposal, I need hardly say that, judging from the past, you might have felt very sure that I should never have unduly pressed my claim, either by desiring to preach oftener than I have hitherto done, or by not cordially consulting you as to your own wishes. During the late incumbency, although your predecessor urged me to claim the Pulpit whenever I felt so disposed, you yourself will bear testimony to the fact that I never availed myself of that privilege without first consulting you as to your feelings and convenience.

You have further declined to accord to me the privilege of offering the Cathedral Pulpit to a brother Bishop, or to any other stranger. This being the case, I feel that I cannot ask permission to do so with the contingency of being refused, an event which you yourself contemplate as possible.

In the ordering of the services, I desired some consenting voice; for it is surely an anomaly to regard the Church as "the Cathedral Church of the Bishop," and yet to

make him an entire cipher in this respect. And here again I think you know me well enough to repose a fuller confidence in me than your objection implies.

Also as to the appointment of the Cathedral clergy, can it be right that the Bishop should not even be consulted since the choice of a fit or unfit person would so closely affect him, and since also, from his official position, he has a more intimate knowledge of the clergy than others.

I speak feelingly on this point, as I understand that you have recently engaged a clergyman to act as one of the permanent Cathedral staff *without even mentioning his name to me.* In the present instance it so happens that I know nothing against his personal character, but rather the reverse. It might, however, have been otherwise.

With regard to the Dean and Canons, I must still insist upon their claims to have special stalls allotted to them, as was the case during my predecessor's time, so that they may occupy them whenever they are present at any service, instead of depending upon casual provision being made for them on special occasions. I presume that the present stalls were originally erected with that intent. You will bear in mind that I only asked that a certain number of these should be appropriated to them.

And now I must close this correspondence, which was entered upon because I felt myself sorely aggrieved, and because I hoped that you would meet me in a generous and fair spirit—the same spirit that I have (as I think you will acknowledge) ever shown towards you. I also conceived that you would have desired to make an equitable adjustment of the claims both of the Rectory and the Cathedral, and that you would have shown a little more anxiety to place your Bishop in a position becom-

ing his office, instead of rendering him dependent on the courtesy of the Rector. I am very sorry that in these respects our correspondence has failed.

Yours very faithfully,

A. MONTREAL.

I regret that you decline to attend the meeting of the Chapter which I have called. I should not have pressed you to do so against your inclination, but I think you will see that you were hardly right in your refusal.